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**Legislative Assembly
of Ontario**

Second Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 3 April 2006

**Journal
des débats
(Hansard)**

Lundi 3 avril 2006

**Standing committee on
social policy**

Organization

**Comité permanent de
la politique sociale**

Organisation



Chair: Shafiq Qaadri
Clerk: Trevor Day

Président : Shafiq Qaadri
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Monday 3 April 2006

Lundi 3 avril 2006

The committee met at 1538 in committee room 1.

ELECTION OF CHAIR

The Vice-Chair (Mr. Khalil Ramal): Welcome, everyone, to the standing committee on social policy. The first order of business in this session is the election of a Chair. Are there any nominations?

Mr. Peter Fonseca (Mississauga East): I move that Mr. Shafiq Qaadri do take the Chair of this committee.

The Vice-Chair: Any other nominations?

Mr. Ted Arnott (Waterloo–Wellington): I move that nominations be closed.

The Vice-Chair: Mr. Arnott moves that nominations be closed. Therefore, we have a candidate who has been nominated. Mr. Shafiq Qaadri, you are the Chair, sir. Do you accept?

The Chair (Mr. Shafiq Qaadri): Thank you very much for your confidence. I accept this chairmanship and declare the meeting is adjourned.

The committee adjourned at 1539.

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STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 8 May 2006

Lundi 8 mai 2006

The committee met at 1601 in room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, welcome to the standing committee on social policy hearings on Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education.

I'll ask now for a member to move adoption of the previous subcommittee report and to introduce that into the record. Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): Thank you, Dr. Qaadri.

Your subcommittee met on Thursday, April 20 and Thursday, May 4, 2006, to consider the method of proceeding on Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education, and recommends the following:

(1) That the committee meet in Toronto on May 8, 9, and 15, 2006, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on Bill 78 in the English and French dailies for one day, during the week of April 24, 2006, and that an advertisement also be placed on the Ontario parliamentary channel and the Legislative Assembly website.

(3) That the start of the meeting on Tuesday, May 9, 2006, be delayed by half an hour after the end of routine proceedings and that the committee request the agreement of the House leaders to ask approval from the House to extend the meeting time on May 9 past 6 p.m. by the same period of time.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Thursday, May 4, 2006.

(5) That groups be offered 12 minutes and individuals 10 minutes for their presentation. This time is to include questions from the committee.

(6) That the committee invite the Minister of Education to appear before the committee at 3:30 p.m. on Monday, May 8, 2006.

(7) That the Minister of Education be offered up to 10 minutes for a presentation, followed by 10 minutes of questions and comments by each caucus.

(8) That the deadline for written submissions on Bill 78 be 5 p.m. on Tuesday, May 9, 2006.

(9) That the research officer prepare a summary of the first week's presentations by 9 a.m. on Monday, May 15, 2006.

(10) That, for administrative purposes, proposed amendments should be filed with the clerk of the committee by 5 p.m. on Monday, May 15, 2006.

(11) That the committee meet for the purpose of clause-by-clause consideration of Bill 78 on Tuesday, May 16, 2006.

(12) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Thank you, Ms. Wynne. Is there any further discussion or deliberation on the subcommittee report? Seeing none, I take it the members are ready to vote. All those in favour of adopting the subcommittee report as read? Any opposed? Carried.

EDUCATION STATUTE LAW
AMENDMENT ACT
(STUDENT PERFORMANCE), 2006
LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'ÉDUCATION
(RENDEMENT DES ÉLÈVES)

Consideration of Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education / Projet de loi 78, Loi modifiant la Loi sur l'éducation, la Loi de 1996 sur l'Ordre des enseignantes et des enseignants de l'Ontario et certaines autres lois se rapportant à l'éducation.

The Chair: We will now move to our next agenda item. If it be the will of the committee, seeing that we are still awaiting our minister's presentation, we can move to the first individual presenter, Ms. Anna Germain. Would that be agreeable?

Mr. Rosario Marchese (Trinity-Spadina): So we're going to listen to the deputants and then have the minister speak in between the deputants? I would prefer to eliminate the minister's statement to move on.

The Chair: I need unanimous consent for this.

Mr. Khalil Ramal (London–Fanshawe): Which one are we voting on? The minister's statement or to start before the minister?

Mr. Frank Klees (Oak Ridges): Chair, I would suggest that, in light of the fact that the minister isn't here, who obviously doesn't think it's important, we move on with the deputants and eliminate the minister's statement.

Mr. Marchese: With all due respect to the minister, I think we started our deliberations late because of a number of things that happened in the Legislature. If it's all right with everyone, with all due respect to the minister, I would prefer that we simply start with the deputants and let that go through; otherwise, if it's not the will of the Liberals to support such a move, I would say we wait for the minister to come and then begin.

Ms. Wynne: My understanding is that the minister is on her way; so she's coming. I don't think either Anna Germain or Annie Kidder is here, actually. So the first two deputants are not here. I think the minister is about to appear, and it certainly has nothing to do with her not being interested. She absolutely wants to come and do this. I think she's about to appear; if we can just give her one minute.

The Chair: May I have consent of the committee for possibly a five- to 10-minute recess?

Mr. Marchese: Or less.

The Chair: Or less. Thank you. This committee is recessed.

The committee recessed from 1606 to 1609.

MINISTRY OF EDUCATION

The Chair: Now it's my privilege to resume the committee. Thank you, committee members, for your indulgence of the initial delay. On behalf of the standing committee on social policy, I'd now like to welcome the Honourable Sandra Pupatello, Minister of Education. Minister, I invite you to make an opening 10-minute comment. Please begin.

Hon. Sandra Pupatello (Minister of Education, minister responsible for women's issues): Thank you so much. I'm glad for your indulgence. We did get caught up with some scrums after question period. I'm pleased to be here today to speak about some very important legislation for the direction of education in Ontario.

If passed, Bill 78, the student performance bill, would be a tremendous boost for improved student performance. This bill is a significant tune-up that will modernize education as a condition for the success of students. The bill contains several limited but substantive amendments to the Education Act and the Ontario College of Teachers Act. These amendments provide the legal support necessary to enable the most important objective in education in this province: improved student performance.

There are four main points: initiatives to support teaching excellence, clarification of responsibilities for boards and the ministry, a partnership in education based on respect, and openness to the public. This legislation

also proposes critical changes to enhance teaching excellence. For example, it would revoke the pen-and-paper test that didn't evaluate a teacher's actual classroom experience and effectiveness in favour of a new teacher induction program. Legislation would also facilitate the extension of teacher collective agreements, beginning in September 2004, from two- to four-year terms.

Our government believes it's time to revitalize and depoliticize the Ontario College of Teachers. It should become a true professional body. The legislation would revitalize the Ontario College of Teachers by having a majority of classroom teachers on its council to carry out its mandate. With the proposed addition of six elected classroom teachers to the college council, there would be 19 elected teacher positions on the council, giving teachers a clear majority. We are committed to ensuring that classroom teachers who sit on council serve the public interest and not the interest of a specific organization. That's why we included in the bill specific conflict-of-interest provisions, including a requirement for council members to take an oath of office and that the college have a public interest committee to support and strengthen teachers in this important function.

I know that principals and vice-principals have requested that their own peers be involved in all reviews or hearings involving a principal or vice-principal, conducted by the college's investigation, discipline and fitness-to-practise committees. Our goal is to continue to create the conditions for increased respect and support for principals and vice-principals across the province. We've discussed this issue with them, and we agree. To address the issues they've raised, I intend to propose a motion to amend the bill to enable such peer reviews for principals and vice-principals. We're strongly committed to supporting our teachers, and we believe that giving our teachers the respect they deserve is a key way of working toward obtaining teaching excellence.

The proposed legislation also contains measures that would support our government's ability to build confidence in public education, with new responsibilities for school boards and the Ministry of Education. The ministry has identified areas of key provincial interest, such as class size, fiscal responsibility, improvements in literacy and numeracy, and safe schools. This legislation, if passed, would clarify ministry and board responsibilities as they relate to these interests and particularly as they relate to student performance. Achieving excellence in education demands a genuine partnership characterized by shared respect, mutual responsibility-taking and agreement about results at every level of the education system.

This legislation, if passed, would help build on a new era of respect and partnership that is already evident in the system. It would respect school board trustees for the important work they do by giving them realistic supports, removing extreme penalties in the act related to trustee compliance, and strengthening and clarifying their role in stewarding education. This bill would respect student

trustees by empowering and recognizing them through new scholarships, non-binding votes, procedural rights and increased resources. And this legislation would enhance respect for teachers through a revitalized Ontario College of Teachers.

I would like to reflect a little bit on the role of school board trustees. I think we can all agree that trustees deserve to be treated and be seen to be treated with greater respect if the public is to understand their role appropriately. That includes the topic of remuneration: Trustees' hard work and contribution towards increased student success has resulted in a productive environment of peace and stability, school progress through improved student achievement and improved services. Trustees' capacity to undertake their role is an important ingredient in successful education improvement.

If passed, the bill would permit school boards to set trustee compensation up to provincial limits that would be set in regulation, in line with school boards elsewhere in Canada, and would grant authority for regulations to provide a retroactive increase to trustees' honoraria for the current school year and provide a process for community input into appropriate levels of trustee honoraria. It would also eliminate arbitrary and paternalistic personal penalties for trustees enacted by the previous government. And it would provide some clarification about respective roles in stewarding education.

I know that there have been those in the sector who are unhappy with some of the aspects of trustee remuneration, and that some oppose a plan to determine the level by factoring in the size of the student population. I'd like to clarify that the size of a student body would not entirely determine the level of remuneration—it would be one of several factors. We know that a one-size-fits-all approach doesn't work well, because it doesn't allow us to recognize the unique and local circumstances facing boards of varying size, both in terms of a board's geographic size and size of its student body.

There have been many questions regarding the role of the citizens' advisory committee. I want to assure you that there will be consultations on these regulations.

Establishing and enhancing partnerships based on respect means giving more flexibility to boards so they can make decisions locally. We intend to create a new era of local flexibility and autonomy by empowering trustees in local funding and policy decision-making. If passed, this bill would introduce the authority for government, in consultation with school boards and other stakeholders, to make regulations to promote quality in education. It would also permit regulations to clarify ministry and board responsibilities related to significant goals such as:

- effective use of resources;
- student outcomes, including elementary literacy and numeracy, and high school graduation rates;
- parent engagement;
- special education;
- health of pupils;
- safety of pupils and staff; and
- publication of reports.

Understandably, some boards have expressed concern that this section of the bill could be misused and boards could lose local authority in some areas because of an arbitrary standard expressed in regulation. I know there are concerns about the proposed new authorities of the minister, particularly concerning future governments; that Bill 78 would give future governments the power to override some local decisions, such as objectives in student outcomes. The government understands that the delivery of education programs and services is through a partnership of both the government and boards. We understand the importance in consultation and having buy-in regarding any standards that may be established.

This legislation follows our commitment to remove barriers to greater student performance. Our government has a solid track record of advancing its goals through consultation and co-operation, and we're going to continue this approach. I intend to introduce a motion at this committee that would specify a requirement in the act for the government to conduct public consultations prior to finalizing certain regulations that promote education quality.

In addition, our government plans to embark on a special consultation with trustees and other education partners around the nature of provincial outcomes and which areas of increased flexibility should be opened up. Discussions will seek to clarify the role and the responsibility of trustees, as well as the relationship between school boards and the ministry.

Student trustees are an equally critical component of our view for partnerships in education based on respect. As a first step in ongoing student trustee development, the legislation, if passed, would provide student trustees with a variety of rights, including a scholarship at the completion of their term, equal access to all board resources, and the same right to attend trustee training opportunities as board members.

On the topic of students, I know that there are some concerns around privacy regarding the collection of student information by the ministry. I want you to know that we have been working closely with the Ontario Information and Privacy Commission and, in response to the issues raised, I'll be tabling a motion to clarify this section of the bill to ensure it conforms to federal and provincial privacy legislation.

The legislation, if passed, would open up education to the public and foster greater accountability. It would give the ministry the ability to require school boards to publish reports respecting their compliance with specific operational requirements that will be set out in regulation. And, if passed, the bill would expand authority to make ministry grants to enhance community use of schools and increased access for not-for-profit groups. Ensuring public reporting of board and provincial initiatives would provide greater accountability and public transparency. The government is taking responsibility for education in Ontario and giving our partners in education the respect they deserve.

1620

I hope this bill will find the support of my colleagues because, ultimately, it represents what we all desire to accomplish in education: openness, partnership based on respect, and improved student performance.

I'm happy to say that I'm very pleased to be part of a government that is finally discussing quality when we talk about education.

The Chair: Thank you, Minister, for your presence as well as the precision timing of your remarks. We now offer the floor to all members of the committee, beginning with the official opposition.

I remind you, Mr. Klees, respectfully, you have 10 minutes in which to make questions and comments, beginning now.

Mr. Klees: Minister, I'm interested in comments that you made regarding your intention to pass a motion that would require the government to conduct consultations before implementing regulations that I believe you said relate to quality education. When do you intend to table that motion?

Hon. Ms. Papatello: I believe that that is slated to happen during clause-by-clause, which is at the end of our hearing dates.

Mr. Klees: I just wonder if it's possible to get a copy of that before clause-by-clause so that we have an opportunity to review it.

Ms. Wynne: Could I just clarify, Mr. Chair? In the subcommittee report we've asked that amendments be filed by 5 p.m. on Monday, May 15, so that would be the very latest time that you'd get the amendment.

Mr. Klees: I understand that. I'm assuming that the minister already has this ready. If she does, it would be helpful to have that. So I'm simply asking if that would be possible.

Hon. Ms. Papatello: The draft of the amendment isn't ready today, but I will endeavour to get you that information in advance of it being tabled to the committee.

Mr. Klees: Minister, would that also apply to regulations that would relate to the Ontario College of Teachers?

Hon. Ms. Papatello: All of the participants in the discussions around the college are actively involved with this now. Of course, in the absence of the bill becoming law, we can only go so far in our discussions around regulation or it would be seen as being in contempt of the Legislature. But when the bill is passed and if the bill becomes law, at that point we're prepared to engage with our partners in the discussion around regulation regarding the college of teachers as well.

Mr. Klees: Just to clarify, before the government moves forward on implementing regulations relating to changes to the college of teachers, you're committing that there would public consultations on those regulations in accordance with this motion that you'll be tabling. Is that right?

Hon. Ms. Papatello: No. To be certain, in the section of the bill—if you just give me a moment, I will find this

for you. I don't want to use up your 10 minutes. Do you want—

Mr. Klees: Do you know what? Could you give me a quick explanation as to why not, because I heard you say—

Hon. Ms. Papatello: I think it's pretty clear that there's a significant section of the bill that deals with the interests of the public. Clearly they're around issues of quality that I think all parents are interested in, and we've committed with those partners to engage in consultation. That's the language that I've used. As to the degree of that consultation, we are now determining how specific the language will be for the amendment.

Mr. Klees: So are you saying that the college of teachers has nothing to do with quality education?

Hon. Ms. Papatello: No. I'm suggesting that what you were referencing just now—in the speech that I just gave or the comments that I just made, what I said was that we are committing to consultation with the sector, with the individual, with the boards, for example, as the regulation will be spelled out, around the quality areas in that public interest section of the bill. We did not commit to public consultations. Whether it's a play on words here or not—I'm not sure what you're inferring. We have clearly suggested, and I have said in numerous conversations with boards, for example, that we're very prepared to engage in serious discussion around what the regulations would be as they relate to the public interest section of this bill.

Mr. Klees: Minister, I welcome that. I'm saying that I think that's a positive step forward. I welcome the fact that your government is willing to consult with stakeholders in education. I'm assuming that parents are stakeholders as well. My only question is, why would you exclude regulations relating to the college of teachers from that consultation before the government implements them? Surely you would benefit from that.

Hon. Ms. Papatello: I have to say that, in all of my discussions with the boards around that section on public interest, which is a whole different part of this Bill 78, not one of the boards that I have talked to has wanted to engage with me a conversation around the college of teachers section. There are certainly other organizations that would like to, and I believe that you might be one of those organizations. I'm happy to have a chat with you around the regulations that you feel might attend Bill 78 as it relates to the college of teachers. I suspect I might know your opinion already, but I am happy to have additional meetings with you as, certainly, an interested party in the makeup of the college and the regulations that attend the college. I'm happy to have that conversation with you.

Mr. Klees: I'd like to broaden that out and suggest to you that it's not just myself, but there are many education stakeholders who would like to engage in that conversation with you. I'm simply hoping that you are open to that and you would include the regulations relating to the college of teachers in that dialogue before you proceed to implement those regulations that you're contemplating.

Hon. Ms. Papatello: I'm going to take all of your comments under advisement. Thank you for them.

Mr. Klees: Thank you.

Minister, there are a number of concerns. I'm glad to hear that you've consulted with the privacy commissioner relating to this collection of personal information. As you know, I had expressed concerns relating to that. I look forward to your amendments concerning that.

I wanted to ask you, with regard to eliminating the qualifying test, are you giving any consideration to some amendments to this legislation to reconsider that?

Hon. Ms. Papatello: At this point, I want to say that, as this bill is before its hearing and the hearing is clearly starting today, we are open to listening to all of the commentary that is coming forward from all of the groups. That's really the purpose of committee hearings. We have so many who have applied to speak to the committee that it would just be really undermining if we were to say at this point that we're shutting the door on any possible improvements to the legislation. I'm happy to hear everyone's comment. We wouldn't presuppose where we're going to land on any particular part. In fairness to all of those who are coming to speak to us, we're certainly open to hear their comments. I think we probably have a good track record of suggesting that we don't know everything, and that there are many people out there in the field whom we have been working with in partnership to improve education, and we're happy to hear the good advice that they may have for us.

Mr. Klees: With regard to the increased compensation for trustees, what was the rationale for making that increased fee retroactive?

Hon. Ms. Papatello: I can't speak for the former minister on a specific item. I will say broadly that I think there was a significant consensus that boards would have difficulty, depending on when this bill became law in-year, if it became law and when it would be instituted—how the boards might pay for it. You're probably very interested to note that we are entering into a significant change in relationship with our boards. We don't want to be punitive in nature with the trustees, but we do want to work with them. We acknowledge that the level of remuneration that your government had offered to them is significantly less and often makes it quite difficult for trustees to properly or fully represent their constituents.

Mr. Klees: Finally, the class size changes proposed in this legislation: You've shifted from terminology relating to a cap on class sizes, and the bill references "average" class sizes. Does that indicate a change in your government policy away from capped class sizes?

Hon. Ms. Papatello: No, I think the best predictor of what may, if the bill becomes law—again, we can't preempt that cycle—that it's very clear that our performance so far as a government has been to fund to cap class sizes, to arrive, ultimately, at a cap that would see 90% of our classes across the province, from JK to 3, capped at 20 or less, and understanding the reality of moving students in-year—that some boards need to have some flexibility when a student lands in January in a new

community and might make that class of 20 into 21; so, acknowledging that. But I will tell you that if the bill becomes law, we plan to entertain significant conversation and consultation with our boards around the appropriate language that might be in a regulation.

Ultimately, our goal is that from JK to 3 we have significantly smaller class sizes. I think you would agree, in looking at our funding, that we have spent tens of millions of dollars to assist boards in achieving this goal.

1630

Mr. Klees: So there is a change in your government's policy, because up to this point, up until Bill 78, the former minister was very clear. Every time he spoke about elementary class sizes, he spoke about your commitment to capping class sizes. There is no reference here. So you're recognizing that there's a need to provide boards—and by the way, I'm not suggesting that's bad; I'm saying—

The Chair: Thank you, Mr. Klees, for your questions and comments. I will now offer the floor to the representative of the NDP.

Mr. Marchese: Mr. Chair, I understand we've been given permission to sit past 6 of the clock by half an hour today as well. They may have moved a motion while we were sitting here. I think that will be all right. I'm just going to say that I've already spoken to this bill. I've asked the minister many questions in estimates. I'd like to forgo my time and move on immediately to the deputants.

The Chair: Thank you, Mr. Marchese, for your generous gesture. I will now offer the floor to the Liberal Party, beginning with Mr. McMeekin.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): I'll be very brief. I've only had the privilege of being the parliamentary assistant in the ministry for about six weeks. I want to just say that what has struck me about the ministry is that there seems to be a working paper on just about everything—discussion groups with stakeholders everywhere.

I mention that because it is very reflective of the kind of strategy that we use in my own riding. One of the first things I did when I was elected was put together a listening advisory group on education. We have 60 members: parents, teachers, principals, students; you name it. We've met and worked very, very hard over the years at trying to develop what I call a shared sense of purpose. Unfortunately, that shared sense of purpose has seen us rallying together to fight for better parent involvement, community use of schools, to stop the closure of rural schools. We've even had morale evenings for teachers, educators who in many instances have felt quite disrespected. We've talked a lot about building issues, mistrust. I think we collaborated very well on one of our primary goals, to get rid of the previous government's appointed supervisor in the last term. So community consultation is a good thing.

My question to the minister: I intuit that the ministry is being collaborative and consultative and wanting to build partnerships. We certainly do that in our riding. Minister,

can you just comment quickly on what sort of consultation took place prior to and in preparation for the presentation of this bill?

Hon. Ms. Pupatello: Let me speak even more broadly than that in terms of consultation. I think it's fair to say that a number of the individuals who will come forward and speak, either on their own behalf or on behalf of their organization, will tell us that they are engaging very much with the Ministry of Education. Some might even go as far as to say, "We're consulting too much with the Ministry of Education." I see that as problems of plenty here.

We have gone 180 from where the last government was with our partners in education. It was a crisis management of the system. It was an opportunity for the government to remove \$2 billion from the education system. That was the legacy of the last government. Clearly, they were not elected for education. That was not their purpose. They had a completely different agenda, and they were elected for it. That's what they had.

Nevertheless, when all is said and done, and we did win and become the government, we had an altogether different agenda from theirs. Ours is about education. The Premier was elected to be the education Premier, and that means education for all of our students, the best that we can, and actually engaging our partners in discussing qualitative issues in education. Since 1995, when I sat as a legislator my first year, I never experienced the discussion about quality. It was always about: How much money was the board getting? Was the board in deficit? How would they cover their deficit? It was never about: Do we have classes that are small enough to better suit the students and their needs? It was never about teacher development and our teachers getting the training that they're demanding in order to suit the needs of students today. The student in today's classroom is altogether different from what we may have faced 20 years ago. It calls for new methods, new instruction, and the teachers demand it. That's the kind of conversation I'm pleased to have.

The Chair: Mr. Fonseca?

Mr. Peter Fonseca (Mississauga East): Minister, congratulations on your new role. I guess it's not so new now; you've been in it for a while.

Every time I go by schools within my community, I always look over, and two words come to mind: opportunity and hope. As our students go through school, I know that is where they are going to spend most of their waking hours. We want to make sure those are places of learning, places where they will have opportunity and will be able to venture to new heights, and the only way that can happen is if we work in partnership. So I am happy to hear you talk about the great partnerships that our government and your ministry have built. I meet regularly with parents, with parent councils, trustees, teachers and principals in the community to discuss what is happening in our schools. I do get a chance to visit and tour our schools within the community, and what I have found is that today our schools are—

Mr. Klees: On a point of order, Mr. Chair: With all respect—my apologies, Mr. Fonseca—I just want to make something clear. Mr. Marchese stood down his time. We are in a time constraint here. We do not have authority to sit past 6 o'clock. As a result of that, it may be prudent for you to defer your time, because I think it's important that the people who are here understand that we have to close off at 6 o'clock. I just wanted to raise that caution.

The Chair: Thank you, Mr. Klees. Mr. Fonseca.

Mr. Fonseca: What I want to bring up to the honourable member is how much better our schools are today because of the values that we've brought to our schools, because of our interest in public education and making sure it's the best and that it's there today and for years to come—so bringing respect, dignity and partnership into our schools and setting those values, and now we've really set ourselves up with lofty goals. We talk about capping our class sizes in the early years, making sure kids get the best start. You're so open and we are so open to looking not only inside the box, but we've looked to other jurisdictions and what some of the best countries are doing around education and how we can improve. Then the last part is putting the resources into that. I know we've increased funding in new dollars by about \$2.2 billion into education.

Minister, can you tell me, in your opinion, what are some of the most important resources that we've provided to schools to be able to achieve some of the lofty goals that we've set for ourselves?

Hon. Ms. Pupatello: I think you rightly point out that we have, first of all, set some lofty goals, and that means that they're difficult. If it were easy, it would have been done a long time ago. But we can't be put off by the fact that it's tough to start meeting standards, because I think parents do demand standards. I will say that some of the best initiatives will likely be seen to be through literacy and numeracy initiatives, through our Learning to 18, our student success strategy. We indeed want to achieve success. I think it's fair to say that we have some immediate responses already and data suggesting to us that it is working. We still have a way to go. In addition to that, we want kids to know that everyone who is employed in the sector of education is happy to be there, because that makes all of us work better.

So we have some lofty goals. I think we're halfway to achieving them. If, in fact, we continue with the success—

The Chair: Thank you, Minister, for your deputation and for your presence here. On behalf of all members of the committee, we'd like to thank both you and your staff on this bill and moving forward. Thank you very much.

ANNA GERMAIN

The Chair: We now invite our next presenter, Ms. Anna Germain, who will come to us in her capacity as a private individual. Anna, if you are available, please feel free to come forward. Please be seated. I remind you

respectfully that you have 10 minutes in which to make your presentation. Any time remaining will be shared equally among the parties. We will begin with the NDP. Mr. Marchese, I would invite you to make any additional comments that you were asking about previously during any time remaining.

Ms. Germain, please begin. Your time has started.

1640

Ms. Anna Germain: Honourable members, Minister Papatello, thank you for hearing me today. I'm speaking to Bill 78 because of a number of serious concerns. As I make my points, I can assure you that thousands would cheer me on, so pretend that some of them are standing in this diminutive room.

For a minister to get such regulatory powers is indeed a very big deal. Like a box of chocolates, you don't always know what you're going to get. The two greatest issues are enforcement and accountability. There are many issues to address. Here are a few regarding students with disabilities:

(1) Labelling: Regulation 181/98 requires boards to assign specific labels to each identified exceptional student. The developmental disability label prejudices academic failure by stating that the student cannot benefit from instruction. It says, "Don't bother teaching this student." So perhaps it is understandable that so few students are even placed in regular classes across Ontario.

(2) Placement: Canada has committed to inclusive education through several international agreements, including the UNESCO 1994 Salamanca Statement. The statement urges all governments to "adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools." It states, "Legislation should recognize the principle of equality of opportunity for children, youth and adults with disabilities in primary, secondary and tertiary education carried out, insofar as possible, in integrated settings." The guiding principles for action at the national level are put forth, emphasizing equality of opportunity—necessary for fighting exclusion of persons with disabilities and for the preparation for adult life.

Board attitudes, policies and actions do not reflect the UNESCO Salamanca Statement. Placement statistics vary greatly from board to board, so which board is the government referring to when saying that "regular class placement is the norm," as has been stated in government special education policy since 1994?

Some history: (a) In the Hysert case, appeal in tribunal, Minister Marion Boyd intervened to ensure regular placement; (b) In June 1994, Education Minister Dave Cooke called together all the provincial associations to announce that regular classroom placement was to be the placement of first choice; (c) The decision concerning Emily Eaton was based upon testimony by the Attorney General on behalf of the Ontario government to the Supreme Court that regular class placement is the norm in Ontario.

October reports show secondary students placed in segregated class without having a legally required IPRC. That's the placement piece.

(3) Government policies are not supporting our students who have disabilities. The few success stories are because of parents' involvement and a few wonderful teachers and an occasional superb principal. Even the laws designed to help them are not being enforced or even monitored. Board policies contravene their rights.

We have two layers of politics, local and provincial, and they keep passing the buck, and this means that conflicts escalate. Boards have no incentive to resolve issues and improve students' education. This means school boards face no pressure to become accountable.

(4) School board attitude and denial of disability-related accommodations: I will illustrate with a quote from a letter, with the family's permission, and I have the family's signed permission to do this today. The student was moved illegally without an IPRC and without informed consent. "Informed" is very key here because this family only speaks a little bit of English. The mother speaks only Urdu. I've been involved in helping this family.

"You have been advised that TDSB allocates special needs assistants staff to support students for two reasons—to provide for the safety or the health needs of students with special needs. We have been informed by the special education staff that Saira does not qualify under these conditions."

It's not true; if you take a look at the contract for the SNAs, this is not true.

Of course, health and safety issues are important, but providing custodial support and denying academic support is wrong. This is not what "special education program" is defined as in the Education Act. This is not what "individual education plan" means in regulation 181. This is not what is meant by education accommodations under the Human Rights Code.

No wonder, then, that at the IPRC they will determine that the student's needs cannot be met in regular class placement because they have refused to do so. The label "developmental disability" assumes that students don't have academic needs and the decision that assistants are only provided for non-academic needs.

(5) Legal attitude: At a legal session for Ontario school boards, a lawyer, talking about inclusive education, stated that parents who want their child educated in regular class are unreasonable because we just want to exercise our rights for rights' sake. He then illustrated with the following two examples: (a) Ernst Zundel—such hate—exercised his right because it was his right; (b) While it may be our right to stand out naked at the bus stop in November, scaring all and sundry, is it the right thing to do?

How can school board trustees be representing the interests of parents when their lawyer representatives say that parents like me are either criminal or irrational because we defend our children's right to regular class placement and quality education programming?

(6) Outcomes: Katherine Underwood at the Monk Centre for International Studies is doing research that links inclusive education practice to long-range outcomes

for health and social integration, networking for jobs and economic well-being for people with disabilities. There is a narrower gap for literacy in provinces with more inclusive policies.

I should just mention that Matt Germain has a very brief comment to make when I'm done.

Conclusion: The education ministry must enforce the law if there is to be accountability. This is the role of government. Students must not be prejudged. There would be less conflict if school boards were required to work with parents and to set higher learning goals for exceptional students. Without enforcement of the laws and without requiring full accountability from the boards, nothing will improve and it will worsen. More funding will improve nothing if you don't deal with enforcement and accountability first.

Now Matt's going to say a quick word.

The Chair: Thank you, Ms. Germain, for your comments and being mindful of the time. We would of course be pleased to invite your co-presenter. If you might, Matt, just introduce yourself.

Ms. Germain: He wants to be called.

The Chair: Mr. Matt Germain, please come forward to the podium. Thank you very much for coming, sir. Please begin.

Mr. Matt Germain: Ladies and gentlemen, I am working very hard on getting all my high school credits. It is hard work but I am getting there. I don't want my school board to hold me back. I want a good future and a good job, and to pay taxes. My mom has worked to fight hard to keep me in a regular class and to get me help to learn. Thank you. Have a good day.

The Chair: Thank you very much, Mr. Matt Germain, and thank you very much, Ms. Germain.

1650

PEOPLE FOR EDUCATION

The Chair: I now move immediately, with your permission, to our next presenter, Ms. Annie Kidder, who's the executive director of the provincial parents' organization People for Education. Ms. Kidder, we welcome you, and I remind you respectfully, you have 12 minutes in which to make your comments. Please begin.

Ms. Annie Kidder: It's been so long. Thank you very much for having me here today, and I'm glad you're having hearings on this bill. I think it's very important that this bill be talked about. I'm only going to focus on one aspect of the bill because there's a kind of everything-but-the-kitchen-sink quality in the bill. The "kitchen sink" part is kind of apt, because a lot of it is housekeeping. There's a lot of cleaning up in this bill. There's a lot of stuff that just has to get into legislation in order to be in the Education Act. I am not going to touch on those parts of the bill. I understand that that has to happen in governments when we change certain policies.

There's one aspect of the bill that has nothing to do with housekeeping, and for which there is no rush and nothing that has to be changed immediately for any other

reason in the Education Act, and that is the section that covers standards and gives the minister the power to make regulations prescribing, respecting and governing the duties of boards to promote the provincial interests in education. There is a small list in the bill about what those provincial interests might be, but it's certainly not necessarily limited to those interests because, as we know, it's regulations and you can add regulations as you deem fit.

Right now, they are listed in the bill as possibly involving student outcomes, parent involvement, special education standards, the health of pupils, safety, reports that boards have to make on their compliance with the bill, and graduation rates. There are further sections in the bill covering compliance with the regulations that have to do with the process that we all know too well about: the minister's power to appoint an investigator when the minister feels the board has done something or omitted to do something in support of these regulations.

I just listened to the minister speak, and I was interested to hear her saying that she was going to propose an amendment obliging the government to consult widely on this particular section of the bill, because she wanted to discern which standards should be set in consultation with everybody involved and where there should be flexibility. I guess she inspired me to decide that I wanted to propose my own amendment, which is that this section be taken out of the bill for now, until after the consultation. I find it very worrying that what we're going to build into the bill is that there's going to be consultation on something that's already set in law. I would really respectfully beg that we actually take this section out. We have a new Minister of Education with new desires, feelings, opinions about education, perhaps a little bit less of a desire to be directly involved in the day-to-day workings of boards, and perhaps it would be worth not having this part in the bill.

I have many concerns about the bill, and we do, as parents, have many concerns about the bill that have to do with the notion of setting one standard for all school boards in all areas of the province. It's very difficult, then, to recognize the differences among boards. It may limit individual school boards' capacity to focus on local priorities. My overriding concern, which may be a little bit more soft, is that it may accelerate the trend that we're already seeing in education to narrow the definition of education—that we end up focusing just on those things that we can measure, just on those things for which we can display nice, simple outcomes and that we start to lose, in other areas in education, other parts of education that are as important to the whole education of a student. These would include extracurricular activities or the arts, areas like that. Is the province's intention eventually to set standards for every subject? It's hard to know. If there are no standards for student achievement in areas like social studies, philosophy, design and technology, the arts, will school boards then tend to support those subjects less? I think there are many things in this bill that do need to be discussed. I think it is time to have another

new conversation about the purpose of public education in that way and about what the areas are in which we want to have standards and what the areas are in which we want to have flexibility. I like the minister's idea of a broad consultation on this section of the bill, but I think it's very, very important that that consultation happen before this bill is passed. Again, I would respectfully request that this particular section of the bill be taken out of the bill until after the consultation.

The Chair: Thank you, Ms. Kidder. We'll now move to approximately two minutes per side. We'll begin with the government side. Ms. Wynne.

Ms. Wynne: Hi, Annie. Thanks for being here. It's interesting, because I think one of the balances we're trying to get at in this act is the balance between local autonomy and provincial—I don't want to say the word "control," but provincial guidance. The consultation that I think is really critical—you're talking about section 4 in the bill.

Ms. Kidder: Yes, section 4.

Ms. Wynne: The consultation that I think is critical is that there be a really robust conversation between the boards and the ministry as they decide what the standards are that should be met.

Anna Germain, before you, was talking about special education and inclusion of kids in mainstream classrooms. It's very possible, given the special education working table discussions, that in the future we may want to look at how boards are doing on putting kids in mainstream classrooms.

I know from my work as a parent activist that one of the things we called for years ago was direction from the province on what the expectation was of boards on a variety of things. When my kids started school, there was no direction on class size, for example. We couldn't get a policy statement on some of the achievement levels and the kinds of things that we're looking for here.

So in this section we're trying to expand the expectation, really, of that dialogue between the ministry and the boards so that there will be some clear guidelines and that clear responsibility. The previous government really muddled those roles and responsibilities. We're trying to take that back and make clearer what our role here at the ministry is, what the role in the local boards is and how we have that conversation. Can you talk about your concerns around the balance between autonomy and provincial guidance, because I've heard you say in the past that you'd like to have provincial guidance on certain things.

Ms. Kidder: I think guidance and expectations are different, even if just in language, from standards in that way, and then enforceable standards, which must be met or there are punitive measures that come over.

What's also interesting about what you say is that you talk about making it clearer, and I think that is very, very important, and that's why I—

The Chair: Thank you, Ms. Kidder, for your remarks. I should have actually offered it to the NDP, and, with

the PC side's permission, offer it now to the NDP. Mr. Marchese.

Mr. Marchese: How much time do we have?

The Chair: You have about two and a half minutes or so.

Mr. Marchese: Thank you for coming. There are some areas of concern, and that is one of the big ones for me. The second-most-important one for me is the public interest committee, which sets up another bureaucracy to oversee and/or to give advice to the college of teachers. I've spoken strongly against that, and I wondered whether or not you have a quick remark on the so-called provincial interest committee that will have no fewer than three and no more than five. Do you have an opinion on that before I get to the other question?

Ms. Kidder: No, my opinion has very strictly to do with section 4 of the bill, over the standards, which those would also be setting.

Mr. Marchese: Very good. I just wanted to let you know that I have serious concerns about setting up another bureaucracy, which is going to be very expensive, and I don't know what the heck they're going to do. I was just hoping for an opinion, but it doesn't matter.

I'm equally concerned about section 4. Part of the comments I have made around this is that it is vague. We don't know what those regulations are going to say and/or prescribe. So while some members talk about guidelines to do with what the province and boards might or might not do, this section is unclear. I'm worried about what it might prescribe around special ed, for example. I'm worried about what it might prescribe around student outcomes as a way of achieving what the province wants rather than what may be in the interest of students across the board. Do you want to comment specifically to my questions or do you want to just leave it to your general concerns?

Ms. Kidder: I would like to quickly say that I think it is very important that the province makes very clear what it expects of school boards and also makes very clear that there is provincial policy that needs to be met. I don't think it's necessary in some cases to set it in a bill, but I think what's important is that we talk about it all very thoroughly first, because, as you say, it's worrying that you can change these things in regulation. New governments can come in and do whatever they like with that part of the bill. It's an enormous change to education policy in Ontario and should be treated that way.

1700

The Chair: Thank you, Ms. Kidder. We'll now move to the PC side; again, two and a half minutes. Mr. Klees.

Mr. Klees: Chair, in the interests of ensuring that we get everyone participating who has come here, I'm willing to defer my time.

The Chair: Thank you, Mr. Klees. Graciously accepted.

Ms. Kidder, I'd like to thank you on behalf of the committee for your presence and your deputation.

ONTARIO SECONDARY SCHOOL
TEACHERS' FEDERATION,
PROVINCIAL OFFICE

The Chair: We now move immediately to our next presenter—and we'll begin, by the way, with the PC side for questions and comments—Ms. Rhonda Kimberley-Young, president of the Ontario Secondary School Teachers' Federation, provincial office. Please be seated, Ms. Kimberley-Young. I invite you to begin now.

Ms. Rhonda Kimberley-Young: Thank you very much, and thank you for the opportunity to make this presentation on behalf of OSSTF. I believe that members of the committee are receiving the presentation just now, and I will speak to some of the highlights from the presentation.

I think the question of balance between local autonomy and provincial control that was mentioned in the last question-and-answer session is really the theme underlying what I'd like to speak about.

In general, when we look at the breadth of this legislation, we are very concerned with the sweeping regulation-making powers that it gives the government. More than 50 different items are listed for inclusion in regulations. Since regulations can be issued, really, at the whim of the government of the day, it will create a permanent condition of uncertainty and a considerable degree of centralized control.

We are concerned, as it mentions on page 2, about some of the potential misuse of the regulations around collecting personal information. I won't go on at length about those concerns, but we do have concerns that personal information on students and teachers can be collected and cross-correlated with performance indicators and could be misunderstood and certainly misused.

In terms of the restoration of professional development days, we are pleased to see two of the days restored that had been eliminated previously. We know that ongoing learning is essential if we all want to improve student success. If new programs and initiatives of the government are to be implemented successfully, the training is needed, not just by teachers but other members of the school team as well.

I won't speak at length about the provincial interest since the last speaker highlighted that in her remarks, but you will see in the presentation that we have serious concerns about the areas of regulation that regard provincial interest—in fact, what will be the provincial interest, how it will be defined and what different categories like “effective use of resources by school boards” might mean. Of course, we're very concerned that it might be too easy to define student success outcomes strictly in terms of standardized testing or other measures that don't give a real picture of how well our schools and our students are succeeding. So we don't want to see simplistic targets being used that don't measure real learning.

We do support the provisions of the bill with respect to student trustees and the recognition that is placed on these individuals and their contribution.

While we welcome the deletion of class sizes from the Education Act, we do not support class sizes being dictated by regulation. Class sizes didn't start with either this government or the previous government. They were negotiated into collective agreements years and years ago between federations and school boards that wanted to address student learning conditions. We are very concerned that by putting the ability to change class sizes in regulation, we're possibly overriding each collective agreement with each newly elected government simply by the stroke of a pen.

Similarly, teacher workload and teaching time are the appropriate subjects of free collective bargaining. When local agreements are worked out to meet the working and learning conditions of students in those communities, they work out far more effectively. Once again, in this bill, by adding these regulatory powers, central power is being consolidated over all areas of education. The same is true with distance education: How it is applied in one community is different from another.

In all of these examples, this government, when in opposition, indicated the important role of local decision-making and the problems that we came across in Ontario because of a one-size-fits-all approach. This legislation and these regulatory powers, however, are the exact opposite of that sentiment. They do not meet the balance that was spoken about in terms of local autonomy versus provincial control. Control will be completely centralized and decision-making taken out of the political arena through these regulatory powers.

We welcome the deletion of the \$5,000 cap on trustee remuneration. We know that trustees, and especially board chairs, work long hours and contribute to education in their community. There are safeguards in the bill to protect the public interest without punishing those who serve as trustees and in fact giving them some recognition for the time commitment they make to education.

We welcome the restoration of funding for such vital services as child care in our schools. We know how important that is. We hope, in light of the federal government's decision, that this part of the legislation will remain.

We applaud the government for implementing a new teacher induction program. That's something that we as a federation have been asking for for more than 15 years as a way to support new people who come into the profession, to help retain them in the profession and make sure that they are getting the skills, advice and guidance they need in those early years. We do have some specific recommendations which you'll see on page 6 and on to page 7. There are some exceptions in the bill with respect to new-teacher induction that we think should be addressed so that it's made more widely available, perhaps to teachers on long-term occasional contracts and others who could benefit by a proper induction into the profession. Again, you'll see those outlined. I won't go through them in detail. With respect to that, we think that the new teacher, himself or herself, should have some role in what their induction looks like and in their mentoring process to make sure that it's a positive one.

Skipping over to page 8 of the presentation: In terms of the college of teachers, we make a number of concerns known in this presentation. We recognize that positions are being added, and you'll see mention of that at the bottom of page 8. The concerns we have, however, are that the minister has indicated to the Ontario College of Teachers that these new positions—there should be six set aside for regional positions for full-time, in-school classroom teachers and six for part-time classroom teachers; as well, that local and provincial elected officers of federations and other organizations should be ineligible from seeking office.

The concerns we have here are that by putting such onerous limits on who can run for the college, despite the fact that all people pay fees regardless of how many days they teach, it will limit the number of people eligible. In fact, it might disenfranchise someone who is on a pregnancy or parental leave the year prior. Surely we don't want to see a situation where teachers are further disenfranchised from holding office in the college. Only 4% of teachers voted in the last college elections. Any recommendations that reduce the number of people eligible to seek and hold office will only further the distance between teachers and the college of teachers. This is certainly not the revitalized college that we had expected to see, given the Liberal government's mention in the throne speech and in their platform.

We have a real concern as well that people holding local office might be ineligible to stand for office. There was an unbiased external audit in 2005 of the governing college and of the conflict-of-interest provisions. There has never been any finding that the college is not acting in the interests of the public and not fulfilling its duties, so to introduce restrictions on eligibility simply is unwarranted and unnecessary.

The minister is also suggesting a very detailed oath. This really is unprecedented in a regulatory body. The college already has a set of conflict-of-interest provisions and bylaws. A regulation dictating such an oath is unnecessary, and teachers will find it insulting. We might suggest a similar approach to that used by the British Columbia college, which was in fact set by a self-governing body in bylaw as opposed to under the direction of the education minister. In fact, it addresses an oath of office that would be more appropriate.

We're also concerned with a time limit being set on college positions. We fear that this will ensure a rookie group of governing council on a regular basis. It does take time to learn the issues, to learn the college structure and to be able to be an effective voice there as a member of the governing body.

We can't understand why some public interest committee would be needed to protect the public itself when the role of the college is to serve in the public interest. This is an unnecessary added layer and, frankly, if the government appoints people as they do to the college, one would expect that they are serving that duty of protecting the public through that role. We believe the audit has shown that all members of the governing council

have taken that role very seriously, whether elected or appointed. So to add another layer is really an insult to those who now serve on the governing council, to those who might be appointed as government appointees as well as to those who would be elected. We can see no reason why our profession should be treated differently than doctors, nurses or lawyers and have some separate and additional layer in terms of governance.

1710

I do want to conclude on a few areas—the presentation goes through the comments I've made in much more detail, but I know our time is very limited. We are very pleased to see a number of changes in this legislation: the added respect for student trustees and for trustees; the teacher induction program, which is very necessary; and the additional PD days. However, we don't believe there is anything here that will truly revitalize the college of teachers or, for that matter, provide the respect deserved by the profession. Of most concern are the sweeping regulatory powers provided in this legislation which will centralize control of education and will not achieve the balance between local and provincial autonomy that was spoken about earlier by a member. Decisions around something as important as education in this province should be a matter for public discourse and debate, and should not be made through regulatory powers at the stroke of a pen away from the public.

The Chair: Thank you, Ms. Kimberley-Young. Regrettably, there is no time remaining for questions and comments, but the committee thanks you for your deputation and your presence today.

JOE ATKINSON

The Chair: I now move to our next presenter, Mr. Joe Atkinson, who comes to us in his capacity as a private individual. Mr. Atkinson, I respectfully remind you that you have approximately 10 minutes in which to make your remarks, which begin now.

Mr. Joe Atkinson: Thank you for the opportunity to appear before you today. My name is Joe Atkinson, and I was the second registrar of the Ontario College of Teachers. Margaret Wilson, the college's founding registrar, wanted to join me today but is out of the country. She asked me to speak on her behalf. In my presentation, I wish only to address the issue of governance of the Ontario College of Teachers. I am here to express our concerns about changes proposed in Bill 78 that will adversely affect the college's ability to protect the public interest.

Put simply, Bill 78 will pass control of the Ontario College of Teachers to the teacher unions. The bill threatens the college's mandate to protect Ontario's students, and it makes a mockery of the concept of self-regulation. In case you get the wrong idea, neither I nor Margaret Wilson are anti-union; quite the contrary. Together, we spent more than 40 years in combined service to teachers' unions in elected and staff positions. We realize that unions advocate on behalf of their members. It's their job

and they do it very well. However, the issue at hand is not one of teacher advocacy but of public interest. To change the law to give the teacher unions control of the professional body is flat-out wrong.

You cannot teach in a publicly funded school in this province until you have been licensed by the Ontario College of Teachers and meet Ontario's high standards for qualification. The college accredits teacher education programs at Ontario's universities so that people entering the profession are prepared to meet those standards. The college also accredits the basic and additional qualification programs teachers take throughout their careers. Equally important is the college's responsibility to discipline educators who do not live up to the profession's ethics and standards of practice.

The public relies on the college to ensure that teachers are prepared to teach, that they uphold the sacred trust we put in them to teach and that they commit to keep students safe. We do not exaggerate when we say that the college's ability to protect the public interest is in peril if Bill 78 passes as written.

Former education minister Gerard Kennedy said he wanted to revitalize the college and give control to working teachers. I'd like to put this myth of working teachers to rest once and for all. The college council has 31 members. The government appoints 14. The other 17 elected members must all hold a teaching certificate. Some, such as those elected by principals and supervisory officers, are simply teachers with additional qualifications. Teachers are already the majority on the college council. Adding more union members makes no sense at all.

When the Royal Commission on Learning established by the NDP government recommended creating a college of teachers to oversee the teaching profession in the public interest, it was explicit. The commission specifically recommended that no one body within the profession should have a majority on the college council. This view has been echoed by principals' groups, supervisory officer groups, independent schools and faculties of education.

As an aside, I was heartened to see on TVO Studio 2's 4th Reading segment late last week that four former ministers of education, representing all three political parties, also share this view. The only groups not advocating such a position are the teacher unions.

Bill 78 proposes that a public interest committee be created to ensure that the college fulfills its mandate to protect the public interest. This does nothing more than give the appearance of public accountability. If the government truly wants to make the college council more accountable to the public, it can impose new safeguards on the existing structure. There is no need to increase the size of the council by adding six more union members.

If the government proposes to solve the problems of this legislation through conflict-of-interest regulation, it is misguided. Trying to block unions from running slates in council elections ignores the college experience. Council members have included officers of the Ontario

Teachers' Federation and the union affiliates. The first two chairs of the council were district presidents on full-time release from teaching to attend to union business. Union members still caucus before council meetings and decide as a bloc in advance how they will vote on issues. The OTF lists as one of its responsibilities "to hold regular meetings with elected councillors"—with elected councillors—"of the Ontario College of Teachers to discuss directions for the council and college."

We ask you: When decisions need to be made, what prevails, allegiance to the union or dedication to the public interest?

Let there be no mistake. The unions will fight tooth and nail to maintain the right to nominate the people who will best serve their interests. Moreover, there are few teachers in this province who would put their names forward independently for election to the council and invite the scorn of their unions. The intimidation factor here is high and cannot be ignored. This is why few candidates stand for election now, many are acclaimed, and why few members even vote, because the outcome is a foregone conclusion.

Margaret Wilson and I wrote jointly to the former minister in March 2004 when he first announced plans to revitalize the college. We provided a detailed perspective of the college's history, the reasons for tension with teacher unions and our thoughts going forward. We offered to meet to discuss it further. Not only was there no meeting; we were never even given the courtesy of a reply to our letter. Clearly, the minister, on behalf of the government, had already made up his mind. Bill 78 simply fulfills a promise the government made to teacher unions prior to the last election, but the cost to the government and to the people of Ontario is an abandonment of the public interest.

We ask you: Do we want unions to accredit university training for new teachers; do we want unions to certify teachers; and do we really want unions to serve as prosecutors, defenders and judges in cases of professional misconduct? This is not the case with other regulators—not the doctors, not the lawyers, not the nurses. It should not be the case with the teaching profession.

Unfortunately, the college got caught in the crossfire of tensions between the previous government and the teacher unions. Bill 78 is an ill-conceived attempt to erase those tensions. In fact, it does the exact opposite by politicizing the college, something the former minister said he did not want to do. If the college is to have the respect of both the public and its members, its decision-making body must be as free of conflict of interest as human frailty allows.

To do its work successfully, the college must involve the entire teaching profession, from classroom teachers to directors of education, and include occasional teachers, vice-principals, principals, supervisory officers, independent school teachers and faculty of education members. Each job category brings different skills and knowledge to the debate and to the work of college committees and panels.

In closing, we ask that you as legislators rally to support the public interest so that the college can honestly, with no conflict, guarantee to the public that teachers are properly trained, certified and competent, and that all Ontario children are safe in their charge. We contend that the clauses in Bill 78 related to the governance of the college threaten any such guarantees.

I would be pleased to answer any questions.

1720

The Chair: Thank you, Mr. Atkinson. We'll have less than a minute per side, strictly enforced. Mr. Marchese.

Mr. Marchese: Thank you, Mr. Atkinson. Are you equally incensed by the addition of a public interest committee?

Mr. Atkinson: Yes.

Mr. Marchese: You haven't expressed it, though. Doesn't that worry you a bit?

Mr. Atkinson: It does, and I think I've addressed it in my presentation.

Mr. Marchese: No, you didn't, that I could tell. Your worry is about the unions.

Mr. Atkinson: No, my worry is also that in fact if this committee is introduced, it shows nothing other than false accountability to the public.

Mr. Marchese: I hear you. The members who are going to be elected to this college of teachers are regular teachers, but you're saying that the mere fact that they belong to a union suggests that they will be speaking on behalf of a union rather than themselves.

Mr. Atkinson: That is the case now.

Mr. Marchese: That's interesting. Were you a member of a union yourself?

Mr. Atkinson: Absolutely.

Mr. Marchese: And you were proud of that?

Mr. Atkinson: Absolutely. I still am.

Mr. Marchese: I'm glad to hear that.

The Chair: Thank you, Mr. Marchese. We open it to the government side. Mr. McMeekin, you have about 40 seconds.

Mr. McMeekin: Okay. Sir, thanks for your presentation. You did mention that it was part of the government's platform and you did, in passing, cover off the protections that the government is purporting to be putting in place. I guess my point would be that we need to see the whole thing in balance.

My own perspective, by the way, for what it's worth—and we may just have to agree to disagree—is that with the protections we have in place, a teacher who is elected to this body is first and foremost a teacher. Their first and foremost interest is with the students, not with touting any kind of union line—at least the teachers I know—particularly with the protections we've put in place.

The Chair: Thank you, Mr. McMeekin. Mr. Klees.

Mr. Klees: Mr. Atkinson, thank you so much for your very bold and straightforward statement on a very important issue. The minister heralds Bill 78, the provisions relating to the Ontario College of Teachers, as

depoliticizing it. I would be interested in your comments to it.

Mr. Atkinson: I think it politicizes it more than ever before. If I was a member of the public and not involved in the profession, I'd be very concerned. I have children who are teachers and I have grandchildren who are students, and it worries me.

Mr. Klees: And of course, sir, anyone who challenges this new governance structure is accused of union-bashing. I'd be interested in your response to that.

Mr. Atkinson: Well, I hope I've made that clear to Mr. Marchese: I'm not at all bashing the union. I'm proud of my involvement in the union.

The Chair: Thank you very much, Mr. Klees, and thank you as well to you, Mr. Atkinson, for your deposition as well as your written submission.

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair: I now move briskly to our next presenters, representing the Elementary Teachers' Federation of Ontario: Emily Noble, president; Barbara Burkett, vice-president; and Vivian McCaffrey, government relations officer. Please be seated. I invite you to begin your presentation. For the purposes of recording for Hansard, if you might just identify yourselves as you make your presentation. Please begin.

Ms. Emily Noble: Thank you very much. My name is Emily Noble. I'm president of the Elementary Teachers' Federation of Ontario. With me are Vivian McCaffrey, our staff officer, and Vice-President Barbara Burkett.

I want to say, thank you very much. I'm pleased to be here today and to participate in the committee's deliberations regarding Bill 78. Our remarks today will focus on three main aspects of the bill. You have our document, but I will just be highlighting some things. The first is the provisions that are designed to support beginning teachers, the second is the broad expansion of regulatory powers that the bill gives the government in regard to the operation of school boards and teacher working conditions, and the third I want to refer to is the reform of the Ontario College of Teachers.

The federation supports the cancellation, through Bill 78, of the Ontario teacher qualifying test. From the very beginning, this test was a simplistic and problematic measure that failed to accomplish its stated objective of assessing the skills of faculty of education graduates. Accountability for teacher competence rests with the stringent standard evaluation process conducted by the school principal and school board supervisory officers at the school level.

Bill 78 proposes to streamline the evaluation process for beginning teachers, and the federation supports these changes. The changes are also supported by a broad group of educational stakeholders that include teachers, principals, supervisory officers, school boards, faculty of education reps and parents.

Bill 78 also paves the way for an induction program for new teachers that would include orientation, mentor-

ing and performance appraisal. The federation believes that the induction program is key to providing beginning teachers with the support they need to be successful in the classroom. It also addresses the relatively high rate of new teachers leaving the profession in the first five years of their careers.

One issue that Bill 78 fails to address with respect to the proposed induction program is how occasional teachers—you may hear the words “substitute teachers” or “supply teachers”—will be included. A good number of recent faculty of education graduates enter the profession as occasional teachers. They should also be able to benefit from the school board orientation for new teachers and, if they are long-term occasional teachers, from the teacher mentoring program. Occasional teachers also need these supports to successfully enter the profession. Occasional teachers are also concerned that they will be discriminated against in the hiring process if they don't have the training and mentoring that other beginning teachers would receive.

The second issue we would like to address is the significant shift from statutory authority to regulatory power proposed by Bill 78. We are concerned that this shift will circumscribe public scrutiny and debate on key political education policies.

Section 4 of the bill, which creates a new subsection 11.1, gives the cabinet considerable power to interject at the school board level with respect to a board's daily operations. This section, for example, enables the Minister of Education to impose yet-to-be-defined measures to “ensure the board achieves student success outcomes.” Teachers and students are already experiencing extraordinary pressure to ensure that student achievement levels on the provincial tests increase and reach what we believe is a rather unrealistic target. We are very concerned that this government or a future one would have the ability to micromanage school board operations to an even greater degree.

The Ministry of Education clearly has the right and the responsibility to set educational objectives and policy guidelines, but school boards should be trusted with the implementation of these in the context of their local realities.

Bill 78 proposes to shift a number of issues that affect teacher working conditions and student learning conditions from the Education Act to regulations.

Section 3 proposes to transfer the number of professional days to regulation. We support the intention of the present government to increase the number of these days, but we are concerned that moving the determination of the number of days to regulation will make it far too easy for a future, less friendly government to reduce the number.

Similarly, section 10 proposes to move the definition of class size from the act to regulation. We are concerned that this move will open the door to a future government to increase class size arbitrarily and without public debate. We recommend retaining the definition of maximum class size in the act and using regulatory power to

define the calculation for these maximums and to further reduce class sizes when possible.

Finally, section 11 proposes to move the definition of weekly teacher instructional time to regulation. The recent provincial framework agreement reached between the government and the federation focused on addressing the workload issues of preparation time and supervision time for public elementary teachers. Transferring the definition of weekly instructional time from the act to regulation could, in the hands of a non-supportive government, have a serious impact on the hard-won gains made recently by teachers at the negotiations table.

The federation recommends that the current 1,300 minutes of weekly instructional time continue to be defined in the Education Act as the maximum instructional time for elementary teachers. The government can always use its regulatory power to improve upon this standard.

Our final comments focus on the proposed changes to the Ontario College of Teachers. Since its establishment, the Ontario College of Teachers has been fraught with problems related to its governing structure and the extent to which the former government attempted to micro-manage the college's affairs through the appointed members to the governing council. The current government has not continued the practice of directing the appointed members, and Bill 78 proposes to increase the number of classroom teacher representatives so that their number may more fully represent the membership within the college. The respect for the autonomy of appointed members and the increase in the number of elected members are important steps towards transforming the college into a truly self-governing body.

Because teachers are not only members of the college but also members of a union, a few individuals have suggested that the increase in elected members would result in handing control over to the unions. This is a spurious accusation and one that holds no basis in fact or experience of the college to date.

1730

First, teachers are no different than nurses or doctors who are also members of both a regulatory body and a union. Why is there such paranoia about teachers? Our members who sit on the governing council of the college clearly understand the role of the college and their role as council members as serving the public interest vis-à-vis the professional practice of teachers. No one has or could suggest that the current elected members of the council have not served the public interest at the highest standard.

The government promised to create a college of teachers that is truly self-governing, but Bill 78 nevertheless indicates that the government does not yet truly trust teachers to take responsibility for the college or its mandate. Bill 78 proposes to establish a public interest committee to serve as a watchdog over the restructured college. In fulfilling its mandate, the college is governed by both conflict-of-interest guidelines and bylaws. No other regulatory body in this province, as far as we can

determine, has a superimposed body comparable to the proposed public interest committee. The creation of the committee undermines the reformed structure of the governing council because it, in effect, adds three to five additional government appointees to the governance structure.

The federation recommends that section 53 of Bill 78, which establishes the committee, be deleted.

In conclusion, we would like to state that Bill 78 contains a number of positive measures that, if implemented, would significantly improve the supports for new teachers. The legislation, however, transfers too much education policy to the realm of regulatory power, and exacerbates rather than solves the problem of undue government interference in the management of the Ontario College of Teachers.

I thank you for your time and, if we have some time, am open for questions.

The Chair: Thank you, Ms. Noble. We have strictly enforced one minute per side, and beginning with the—

Interjection.

The Chair: Thank you for deferring that. We'll now move to the PC side, Mr. Klees.

Mr. Klees: I'll defer mine if Mr. Marchese defers his.

The Chair: We have a contingent point of order. Mr. Marchese declines. Mr. Klees.

Mr. Marchese: No, no, I have questions.

The Chair: Agreed. Mr. Marchese declines. Mr. Klees.

Mr. Klees: I find it interesting, Ms. Noble, that in your statement you make an absolute statement that the former government directed its appointees to the college, but that the union did not and does not. I find it interesting that you accuse public appointees to the council of being essentially puppets of the government, but union members who are elected are not. Can you tell me on what basis you draw that conclusion?

Ms. Noble: I take issue with your conclusion that I'm not talking about the union. What I'm trying to point out is that there has been considerable bashing of the union. It was a known fact that Minister Janet Ecker met on a regular basis with the public appointees and talked with them about what was needed at the college. That was well known. All I'm saying is that if people are going to take potshots at me as a union, then I think they need to be without spot themselves. We meet with our appointees, but they listen to us as teachers. They make up their own minds. The track record at the college, I would argue with anybody, is that those representatives from the teachers in fact vote the way they wish to. They are not directed by the union.

The Chair: Thank you, Ms. Noble, and thank you, Mr. Klees. Mr. Marchese, a brisk minute or so.

Mr. Marchese: Thank you for coming. As to establishing another bureaucracy of three to five, with staffing, to "advise the council with respect to the duty of the college and the members of the council to serve and protect the public interest," I'm glad you agree with me that we need to get rid of that.

The quick question is, the college functions: They certify teachers, they take licences away and they offer professional development. What could these teachers possibly do that could be harmful to the public interest?

Ms. Noble: We see absolutely nothing the teacher unions do that is in any way harmful to the public interest. In fact, teacher unions promote the public interest. If you look through the magazine from the college, in terms of the blue pages and taking issue with—we are a self-regulatory body and we do care about the profession.

The Chair: Thank you, Ms. Noble, Ms. Burkett, Ms. McCaffrey, for your deputation from the Elementary Teachers' Federation of Ontario.

ONTARIO PRINCIPALS' COUNCIL

The Chair: We will now move briskly to our next presenter: Mr. Ian McFarlane, president of the Ontario Principals' Council. Mr. McFarlane, I invite you to make your deputation, for which you have 12 minutes, which begin now.

Mr. Ian McFarlane: Thank you, and good afternoon. My name is Ian McFarlane, and I am the president of the Ontario Principals' Council. The OPC thanks the members of the standing committee on social policy for the opportunity to comment on Bill 78.

This bill contains proposed changes to many facets of the Education Act. In light of our limited time here today, we have prepared a background, which is going around now, that outlines our major issues, proposed revisions to Bill 78 and regulatory changes that would address these concerns. I'll comment very briefly on five items that we've highlighted within the bill.

To begin with, the one we want to spend a little more time on and the one that's most important to principals across the province is the issue of supervision in schools. While it's a small item inside the bill—the would-be regulations around student safety—we feel that it's a little general and doesn't really address the unintended consequences of the framework agreements and collective agreements around the province. What we do know is that the unintended consequences of those agreements are that instructional time has been reduced in some schools, some programs have been limited and supervision has been reduced. We know that is built into the framework agreement in the elementary panel.

We recommend, if you turn to page 4 in the handout, that there are a variety of general statements that we think will allow for those reductions in supervision time to occur in a legitimate way through collective agreements, without impacting negatively and maybe in an unintended way; for example, emergency and extraordinary events not counting on supervision schedules. There's a kind of ongoing duty—we're talking about both panels now—to provide supervision and care for students outside of assigned supervision. There are other suggestions as well.

The second item we want to comment on is class size caps and student success. Lots of folks this afternoon

have commented on class size maxima, and to a point, they make very good sense. Our request is that that is conjoined with a kind of flexibility that doesn't disadvantage students. Unfortunately, there are schools in Ontario that have to turn students away from classes because of the date on which they are attempting to move into those classes or the inflexibility that's built into staffing processes in boards. We do believe that some flexibility, as opposed to hard caps, will allow students to be served by a good initiative.

The new teacher induction program bears all kinds of promise for new teachers and principals to work together. We do believe, though, that there are two items in that part of the bill that may be limiting very positive elements of teacher evaluation. First, we're concerned that the authority of the principal to evaluate a teacher in a non-evaluation year has been taken out. That may, in our view, be an omission rather than a plan. Secondly, it also takes away from the teacher the ability to request an appraisal mid-cycle. That a teacher would request a review may sound like an oddity, but frequently, coming up to a point of promotion, for instance, a teacher does request it. Those two items are missing, and we would like to see them back.

We do want to comment on the Ontario College of Teachers, but I think I can do that very briefly, in that I understand the minister spoke in favour of peer reviews and intends to add an element of peer review. Our notes on that are inside.

Another fairly minor point, but one that we believe is important to a number of principals around the province: The definition of a principal currently uses the words "in respect of a school," but we do note that a number of principals are employed in a variety of roles within school boards. We think that a minor change in language will address that.

The first eight pages are really a summary of my address to you. The remainder are a series of wording recommendations around regulations and the act, which we invite you to look through.

Bill 78 presents an opportunity to improve the education of Ontario students, but we would respectfully suggest that a number of changes need to be made to the bill in order to ensure that the government's priorities of improving student achievement, encouraging students to remain in a learning environment, ensuring a safe learning community and providing ongoing professional development for our educators can be achieved. We encourage the committee to carefully review and consider the proposed legislative and regulatory changes we have proposed.

Thank you for the opportunity to present these views of Ontario's public school principals and vice-principals.

1740

The Chair: Thank you, Mr. McFarlane. There's a generous amount of time for questions: about two and half or three minutes for each side. Mr. Klees, please begin.

Mr. Klees: Thank you so much for your presentation. I'd like to focus in on the issue of supervision and the

difficulty that the four-year contracts that have been signed has left you with as principals. I'm concerned about your comments, which are very strong, relating to the compromising of safety of students in the schoolyard. I'd like to know from you what can be done now that those contracts are in place to ensure that principals can in fact meet the safety and supervision requirements within your schools.

Mr. McFarlane: Certainly, we don't see a world in which those numbers will change or contracts will be annulled. What we do see, though, is an opportunity to use this bill to better define some of the issues that exist. For instance, there's clearly instructional time. That instructional time needs to be protected, as opposed to eroded, in order to make supervision work. We do know that there are places in the school day that are a little bit fuzzy, if I could, and entry time would be on excellent example. We do think this is a great opportunity to clarify those things: What constitutes assignable time and supervision? What constitutes the general duty of care that we would all have in the school for kids?

Mr. Klees: Have you made some specific recommendations in terms of how they can be achieved?

Mr. McFarlane: Yes, we have. We've actually put it in the language of the bill, as well as in the text of my comments.

Mr. Klees: Okay. I'd like to ask you as well regarding the issue of the college. You indicate here that a specific definition of panel should be identified. Could you help me understand why you feel that establishing a roster of panellists would be important?

Mr. McFarlane: That is a mechanism, in our view, of making peer review work. We do know that we will be a very minor voice on the governing council. Currently, the members of those committees are drawn from the governing council. We do know that the act currently allows for other appointees, and we're just requesting that that be enacted in order to achieve peer review.

The Chair: We'll move now to Mr. Marchese.

Mr. Marchese: Thank you, Mr. McFarlane. Much space is devoted to the duties of the principal with respect to the appraisal process for teachers, and I think that's good. But if principals are to conduct an appraisal process, should they themselves not be appraised first, or should there be nothing in the bill that talks about who supervises the principal?

Mr. McFarlane: I can't disagree with you; in fact, I believe it's simply a timing issue. Discussions have begun on principal and vice-principal performance appraisals. It's there in the act in a very general way, but we'd welcome movement and change there.

Mr. Marchese: I just asked for the Liberals, so they remember when they introduce amendments.

You talk about how hard caps are injurious to the educational system in some way or other.

Mr. McFarlane: They can be.

Mr. Marchese: Or could be; in many cases, it might be. But there is no mention of caps in this bill. You're aware of that, right?

Mr. McFarlane: What we're concerned about is in a definition through regulation.

Mr. Marchese: Right. That they might then refer—

Mr. McFarlane: Yes, inflexible class size maximum—

Mr. Marchese: But at the moment, there is no mention of caps in the bill. They just talk about maximum average class sizes.

Mr. McFarlane: And we've made some suggestions that would ensure that we can't end up with hard caps of students.

Mr. Marchese: I'll try to read it.

The minister and you talked about how this improves student learning. In fact, the Liberals call it the student performance bill. The minister talks about discussing quality education. Could you refer to what is in this bill that will enhance student learning and student performance? It's for my benefit and perhaps for the benefit of the Liberals members who are prepared to learn.

Mr. McFarlane: I came prepared to talk about a series of concerns that we had. Boy, you're putting me in the interesting position of talking about a whole bill. To tell you the truth, the very fact that there's concern given in detail in a number of places to revising and renewing how we govern schools and education I think is wise.

Mr. Marchese: I know there's nothing here about student performance; that's why I asked you. Because that's what they call this bill, but I think it's dumb to say those things.

There's something here called the public interest committee, and you heard me ask a number of deputants—

The Chair: Mr. Marchese, with respect, I will have to intervene and offer it now to the Liberal side. Mr. McMeekin.

Mr. McMeekin: I just want to say, thanks so much for your presentation. Principals clearly play a critical role in our education system. I take from what you're saying that you stand, not unexpectedly, for quality at every different level, with every different professional group in our school system. I was particularly pleased with the helpful comments and the format of your presentation, your background paper—I had a quick scan of that. There's some very good stuff there.

My specific query to you would be with respect to the peer issue that the minister spoke to—peer review. Do you view that initiative, that move, favourably?

Mr. McFarlane: Well, we'll see what the details are, but that's certainly what we've been asking for since the inception of the college. In our view, a disciplinary hearing that involves a principal ought to have someone—some one—on the panel who has been in that role and understands the complexities from that perspective.

Mr. McMeekin: I understand and agree with that. I was pleased that the minister referenced it and I was pleased that you seemed to be affirming it. Thank you.

The Chair: Thank you, Mr. McFarlane, for your deputation today.

TORONTO CATHOLIC DISTRICT SCHOOL BOARD

The Chair: I will now call our next deputant: Mr. Oliver Carroll, chair of the Toronto Catholic District School Board. Mr. Carroll, welcome. Please be seated. I invite you to make your comments within the next 12 minutes, which begin now.

Mr. Oliver Carroll: Thank you very much, Mr. Chair and members. I would start by saying that we have a very positive relationship with this government and we're very happy with the new minister and, of course, her very capable parliamentary assistant.

Ms. Wynne: The two of us?

Mr. Carroll: Yes, both.

Mr. Klees: What did you get for that?

Mr. Carroll: Well, I'm not finished yet. The "ask" is at the end.

They have great integrity and we have confidence that they will, with some outside, external advice, do the right thing.

Having said that, I'm afraid that the minister has inherited a deeply flawed piece of legislation. The regulatory powers contained in this legislation are probably far beyond anything we have ever seen in any other piece of legislation. We ask you to remember, when you're thinking about this, that there are only four sets of truly elected officials in this country: yourselves, municipal councillors, federal MPs and ourselves. We're elected from the general population, and every once in a while—four years, I understand, now—we have to go back to our electorate and explain our actions, which include what has gone on over the last four years—three years, up till now—with the school boards. We believe that while the government has had the best of interests when they've looked at drafting this legislation, we are very concerned that a future government or a future minister might enact or make regulation changes that would in many ways lead to a degree of abuse.

Everybody who has spoken today, from Annie Kidder on, has suggested—except for the principals—that the government needs to take a look at how these regulations are going to be, first of all, presented in the legislation and then enacted. The Ontario Catholic School Trustees' Association—I'm not sure if they have been here already or if they're on the agenda—actually have a proposal around legislation if the government felt that it couldn't remove this section at this point in time, and it's contained in what you have in front of you. What it really does is require very broad discussion, very broad consultation, before any regulatory changes could be enacted. The legal wording for that, so as to make it very easy for your drafters, is actually included in my presentation.

There are a couple of items I'd like to touch on very quickly. I've heard a great deal of discussion about the college of teachers and Mr. Marchese's concern about a public interest body. I agree; I'm not sure why a college of any type, if it's properly constituted, also needs a

public interest body to look over its shoulder. I've been fortunate to be recently appointed to the council of the College of Physicians and Surgeons, and I heard them referred to earlier. The majority of members of that body are not elected from the profession. There are some who are appointed from the universities, but the majority position on that particular council are actually appointees of the government. The reason for that is to assure the public that the college itself is a credible institution and it's looking after the public's interests at all points in time. I'm not sure when it comes to discipline etc., but I would note in that particular body that the majority of any discipline committee are external members. They are not members of the profession.

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A couple of other items: The privacy provisions concern us, and I do lay out within the presentation what we think should be done there. Let me speak for a minute on trustees particularly. This bill has removed some of the sanctions against trustees but it has left in one of the most critical ones, and that is where trustees can be held severally—how does it go?—individually and severally, or whatever it is, liable in a court for any decisions they take that would have exceeded a minister's order. I think that's excessive. I can't think of any other level of government where that plays out. If the minister feels that her orders have been ignored, she has a recourse to the courts like everybody else, and the courts have more than ample authority to enforce her orders. She doesn't need to provide to the general public the right to sue individual trustees because they may have taken a decision in good conscience when it came to the education of our children.

The honoraria: Of course, we could debate for hours what is an appropriate amount. I'd just like to finish by suggesting that again we have something here where whoever drafted this couldn't decide what they really wanted to do, so at one level said, "We'll have a maximum," and then at the next point said, "But you should discuss that with members of the public, who should be chosen by whoever decides what the process is," while at the end of the day the whole matter goes back to the board that initially thought about it. It seems to me that somebody tried to have both sides of it, as they did with the college of teachers, in that, "We will put on the majority of teachers, but we should look after the public interest and we'll have another body on the outside to look after it," knowing full well that the people who take the decision, whether it be trustees or the college of teachers, are the people who are duly elected to that particular board.

Anyway, those are my comments.

The Chair: Thank you, Mr. Carroll. About two minutes each; we'll begin with the NDP side. Mr. Marchese.

Mr. Marchese: Mr. Carroll, thank you. This presentation: You're doing it on behalf of all the trustees of the—

Mr. Carroll: No, I'm just doing the Toronto Catholic school board. The Ontario Catholic School Trustees' Association, I think, is somewhere on your agenda.

Mr. Marchese: And they all agree with your presentation, I'm assuming; right?

Mr. Carroll: Yes, the majority does—of the Catholic school trustees.

Mr. Marchese: Yes.

Mr. Carroll: Yes.

Mr. Marchese: Very good. I'm glad that you agree with me. I was just trying to find the point where your board takes a position vis-à-vis the public interest committee, but I'm glad you're taking a position that says that it's an unnecessary bureaucracy that is very expensive, that will require a secretariat of sorts. When we have a shortage of dollars, that's an incredibly egregious waste of time. I'm saying that, but you're agreeing.

You talked about the college of teachers. I wasn't clear what position you were taking, or the board. Are you agreeing with the distribution of numbers according to the way the bill lays it out?

Mr. Carroll: I'm pointing out that other colleges that have been used as examples to justify the composition on this board are, in fact, quite different.

Mr. Marchese: I agree. Could you comment on the composition of the current college of teacher numbers? They'll have one more teacher, and that puts the emphasis on teachers having control of the board. Are you agreeing or disagreeing with that?

Mr. Carroll: As it is now, I don't see any real need for change. If the argument is, "What's one as opposed to five?", there's a huge difference.

Mr. Marchese: So you're disagreeing with the changing of this distribution, which gives power, in effect, to the teachers. You're disagreeing with that, and why?

Mr. Carroll: I'm suggesting that if the public interest is going to be protected, the majority of people have to be from the public.

Mr. Marchese: And what public—if I can—

The Chair: Thank you, Mr. Marchese. We'll move now to the Liberal side; two minutes, please. Ms. Wynne.

Ms. Wynne: Thanks, Oliver. Thanks for being here. Two things: On the consultation around the regulations and the standards that the minister and the board can discuss—I don't know if you heard the minister today.

Mr. Carroll: No, I didn't.

Ms. Wynne: She said that she's committed to bringing an amendment to introduce a consultation piece into the legislation on that, and I think that's very important. I know that the ministry officials are looking at other legislation that we've already brought forward, and you've got one example of it here—consultation.

Mr. Carroll: We've decided to be helpful.

Ms. Wynne: You're very helpful.

I just wanted to ask you this: Having been a trustee and watching boards as they work, would you say it's fair to say that we have to dig out of a hole in terms of public confidence in school boards and in teachers, a hole that was dug by the previous government, so that we have to be really impeccable in terms of having processes? I'm looking at the trustee honoraria issue. That whole issue of public consultation, I think, is part of this need to make it

clear to the public that we're supporting good people doing good work and it's an open process. Could you just comment on that?

Mr. Carroll: If I could take out the editorial comment about the previous government and deal with the rest of it—

Ms. Wynne: Sure, that's fine; that was my comment.

Mr. Carroll: I appreciate that. Obviously, the public has to have confidence in any body, and trustees have in many ways let down the side. We need to get out there with our public and show them the work we're doing on their behalf. We need to consult. Having said that we need to consult, it's not clear to me why we need the minister to, in the first case, lay out what the parameters are or what the maximums are. What we're doing is having him or her say, "Here's the maximum. Now go and consult and you can pass the maximum." It seems to me we may be inviting people into a meaningless consultation.

The Chair: Thank you, Mr. Carroll. We now move to the PC side.

Mr. John O'Toole (Durham): Thank you very much, Mr. Carroll. I appreciate the work that trustees have done, having served several years myself as a trustee as well on the provincial board for Catholic school trustees.

I guess my comment really—

The Chair: Mr. O'Toole, the Chair would invite you to use the microphone.

Mr. O'Toole: Very good. Can you hear me fine?

Mr. Carroll: I can hear you, but I'm sure not anybody behind me can.

Mr. O'Toole: Just a comment. The Wellington board chair said that Bill 78 takes the autonomy away from the school boards. In fact, if it's a true reflection by one of your peers, you would say that it's actually reducing the autonomy of the board.

If you could comment on that, in light of the recent audit of the provincial school board, Dufferin-Peel, which is a separate board as well—there is a huge gap on the salary grid issue. Would you like to comment on that, in terms of the autonomy of the board and some of the mechanisms in this bill?

Mr. Carroll: The fact is that at this moment in time, until the government actually enacts a regulation, it's not clear what autonomy the boards would lose.

Our concern is not that any particular minister or government would be malicious. But we all know the sayings about the abuse of power etc. When a government has it—and I think Ms. Kidder touched on this—the fact of the matter is some other minister may at some other point in time blunder into a degree of control they didn't mean to.

There's no doubt on the second point, Mr. O'Toole. There's no doubt that there are issues that need to be sorted out on the financial side. One of them is the salary benchmark. We're in discussions with the government. Dufferin-Peel, I think, is probably having its set of discussions as well. We're hoping we can resolve those. It'll be an issue of a little give and take before they're actually resolved.

The Chair: Than you very much, Mr. O'Toole. And thank you as well, Mr. Carroll, for your presence and deputation.

MARTIN THOMASON

The Chair: We now move to our final presenter of the evening. Please come forward. Just before that, I would like to acknowledge, on behalf of the committee, the generous rescheduling from the Cuddy family, both Natasha Cuddy and Neil Cuddy, who are, in fact, our next presenters on the schedule, but have agreed to come forward on Monday, May 15. The committee thanks you for allowing us to maintain our parliamentary schedule.

Our final presenter of the day is Mr. Martin Thomason, who comes to us in his capacity as a private individual. Mr. Thomason, you have 10 minutes, beginning now. Please begin.

Mr. Martin Thomason: Good afternoon. My name is Martin Thomason. I'm here to read into the record the opinion and personal experiences of a family who could not be here today. They have requested from me and given me their consent to present the following:

"Thank you all for the time afforded me in this very important process regarding Bill 78, through my representative speaker, Mr. Martin Thomason. I will try to demonstrate the circumstances which have compelled me to make arrangements to be heard by this committee.

"In particular, my interest and understanding of this amendment to the Education Act is the proposal to add a new section, section 11.1, which authorizes the Lieutenant Governor in Council to make regulations requiring school boards to adopt and implement measures specified in the new regulations to do the following:

"(1) ensure that a board's funds and other resources are applied effectively in compliance with the act;

"(2) ensure that a board achieves student outcomes ... ;

"(3) encourage involvement by parents of pupils of a board in education matters;

"(4) provision of special education services by a board;

"(5) promote the health of a board's pupils;

"(6) promote the safety of a board's pupils;

"(7) publish reports respecting a board's compliance with regulations made under this section, in accordance with such rules about form, frequency and content.

"Bill 78 proposes to amend section 230 of part VIII of the Education Act, which is the section that deals with when the minister may direct an investigation of a board's affairs, to include a contravention of any regulation made under new section 11.1 as a reason to investigate a board's affairs.

"Through a very brief accounting" of events, "I hope to demonstrate the drastic need for measurable accountability within the Ontario public education system.

"Our particular experience necessitated the writing of the following letters to ... government and school board officials after enduring three years of devastating loss of opportunity for our son to access ... education. [He] failed

to make any progress and actually demonstrated obvious skill, behavioural and social regression ... despite our efforts to advocate for educational programs and services....

1800

"At the end of his first school year, our board publicly reported a \$2.3-million surplus. Subsequent reports have shown special education surpluses had amassed from 2002 to 2004, totalling over \$100 million for school boards across Ontario. Please review the attached document....

"The experience of one family is insignificant when considering the public interest but the waste of public dollars into a program which has demonstrated continual failure and has no accountability surely is.

"Please consider the highlights of the provincial results from the Education Quality and Accountability Office for the 2004-05 school years (attached) that report [that] grade 3 students with special needs have demonstrated a relatively stable performance in all subject areas over the past four years while their typical peers' scores have increased substantially over the past four years.

"The Ministry of Education reports a huge influx of education dollars and in particular special education funding over the past two and a half years. The published results and the direct experience of families beg for questions to be asked as to how this money is being used.

"In other words, huge influx of cash equals huge increase in surpluses equals no benefit to children."

Please consider the following, dated May 16, 2005. This is to a superintendent of student services:

"Over the past five years, since Johnathan was diagnosed with autism, we have had to constantly advocate for treatment and appropriate educational programs, supports and services. We have achieved some ... success ... but for the most part, have endured the devastating consequences—emotionally, financially and physically—of the failure of the Ontario government and the school board to provide appropriate accommodation for Johnathan.... We were constantly battling regression due to inappropriate programs, supports and services within his school placement. We have been strongly advocating for appropriate special education programs and services since April 2002.

"In early December 2004, we came to the realization that despite the countless hours we had spent advocating for Johnathan ... he would [not] receive the programs and services that he required ... based on a number of events including the following:

"(1) participating in good faith in the mediation process throughout the summer of 2004 in order to secure a somewhat more appropriate placement in the school only to discover the agreed placement was never implemented ... ;

"(2) ... two and a half years of Johnathan being in the board without appropriate programs and services being provided and institutional barriers put in place by the board, resulting in an inability of Johnathan to access school/education;

"(3) having received the decision of the Ontario Human Rights Commission not to refer to tribunal the matters before it regarding Johnathan's rights to an appropriate education ... despite the fact that the factual finding underpinning that decision has since been entirely discredited by the Superior Court of Justice in the case of Wynberg et al vs. Ontario;

"(4) having returned Johnathan to school after a ... request to have his qualified support reinstated ... only to ... half-time" and then her leave the school "as a direct result of the failure on the part of the board to provide her with a full-time position consistent with the 2004 mediation agreement;" and

(5) the Premier's reversal of a written campaign promise "to provide IBI programming to children over six after getting our vote...."

"... I realized that we were living in a very harmful environment for both Johnathan and his family and needed to look at alternatives.... The failure of Ontario and the school board to provide appropriate accommodation for Johnathan was destroying any chance he could ever hope to have to enjoy the full benefit of education and treatment....

"Acknowledging that we could never give up on what experts had concluded Johnathan required in order to learn and progress ... we looked for options and assistance outside of Ontario and even Canada...."

Our search led us to Calgary, Alberta.

"We contacted government and private agencies, school boards and spoke with some families who lived there in order to understand what it was that we could expect....

"In January 2005," we went to Alberta to "meet with these people and agencies.... We visited public schools, met or spoke with government officials, spoke with service agencies and toured Janus Academy to understand their school and the application requirements. We studied cost of living, provincial tax bases and potential funding. We learned the application processes ... for any available programs which Johnathan might qualify for until of the age of 18 years.

"We came home and began to weigh our options and look at what opportunities we saw for Johnathan in" Ontario in a school board "for the immediate, near and distant future and the outlook was unchanged." Moving to Alberta "would mean leaving our home, our family and our friends to meet the needs of our child. It is not a process we began without recognizing the cost and it was one we would never have undertaken if we believed Johnathan would receive the accommodation he requires in Ontario."

In May 2005, "We all agreed it would be in Johnathan's best interest to make the move for the duration" of a two-year employment contract offer. Even though the recent two-year court decision had changed the landscape in Ontario, "it was clear at the IPRC meeting on May 9, 2005, the provision of all the clearly identified supports and services necessary for Johnathan to enjoy the full benefit of public education would

continue to be denied and that the government of Ontario had already announced ... their intent to ... appeal the decision up to the Supreme Court of Canada, leaving us with yet more years of uncertainty....

"It is with great sorrow that we are compelled to leave our home province, our friends, and our families in a country and a province that projects an image to the world of compassion and humanity and purports to be a world leader in human rights and child protection and quality education for all.

"The purpose of this e-mail is to inform you" that next year, "Johnathan will not require the educational services offered by the school board which have consistently failed to meet his needs, have denied him his right to be free from discrimination based on disability and have never allowed him the right to an appropriate special education free of cost....

"June 10, 2005

"Minister Bountrogianni:

"The purpose of this letter is to try once again to demonstrate to you and your government the plight of children with autism and how it has been exacerbated by the actions, inactions, statements, broken promises, misrepresentations and ineffective policies and procedures now being perpetrated and relied upon as meeting the needs of these historically disadvantaged persons by your office in particular and the Ontario government as a whole.

"As a parent of Johnathan, a seven-year-and-eight-month-old child with autism, I can confirm the reality of the programs and services available in my community. We are supposed to access the wide range of appropriate services from Ontario—those services which you announce time and time again to the Legislature and the media that are currently in place for children with autism.

"I can clearly demonstrate to you ... that despite the efforts you announce over and over again ... this family (who relied not only on the famous McGuinty promise 'to extend treatment beyond the age of six' when we voted but also relied on your statement that you were going to 'do things right so families would never have to complain again'), does not have the benefit of a single initiative announced by this government.... but actually suffer in worse circumstances with regards to all the perceived available services.

"My family" received "less SSAH support each and every year.... Johnathan has been denied access to school

repeatedly because of the school board's failure to provide and the Ministry of Education's failure to ensure appropriate programs and services. Johnathan does not receive any services from the IEIP program despite Justice Kitley's ruling of April 1, 2005. He does not have access in school to the new ABA consultant initiative."

Ironically, "Premier McGuinty chose not only to break his promise of extended treatment but actually directly impacted my ability to provide private treatment services by removing \$1,500 per year for health services taxes from our yearly net income, and your office decrease my SSAH allotment by \$540 per year. This new tax which was supposed to increase access to health care for all persons in Ontario has resulted in our inability to do just that....

"Conversations, meetings and e-mails and letters with different bureaucrats from your offices both locally and at Queen's Park have produced only the political rhetoric responses commonly provided to the press. E-mails, several telephone conversations and a meeting with ... (my elected Liberal MPP) ... have since resulted in no assistance....

"Despite my efforts and the efforts of your local branch office, no one can find the abundance of appropriate services you say exist to meet the identified needs of Johnathan."

Similar efforts with the Ministry of Education—

The Chair: Mr. Thomason, I'd like to respectfully let you know that your time has now expired. On behalf of the committee, I would like to thank you not only for your presence but also for your thoughtful written deputation, which I'm sure we will all consider at leisure.

With that—

Mr. O'Toole: On a point of order, Mr. Chair: I would like to request from the researcher a background on the Royal Commission on Learning and its relevant studies on the formation of the college of teachers at the time of the royal commission report, as well addressing the specific issues of independence and composition.

The Chair: Thank you, Mr. O'Toole. Your research directive has been duly noted. Thank you as well to all deputants who presented, and to you, Ms. Cuddy, for your deferral. Thank you to members of the committee.

This committee stands adjourned till approximately half an hour after routine proceedings tomorrow. Thank you.

The committee adjourned at 1808.

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Standing committee on social policy

Education Statute Law
Amendment Act
(Student Performance), 2006

Comité permanent de la politique sociale

Loi de 2006 modifiant des lois
en ce qui concerne l'éducation
(rendement des élèves)



Chair: Shafiq Qaadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 9 May 2006

Mardi 9 mai 2006

*The committee met at 1617 in room 151.*EDUCATION STATUTE LAW
AMENDMENT ACT
(STUDENT PERFORMANCE), 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'ÉDUCATION
(RENDEMENT DES ÉLÈVES)

Consideration of Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education /
Projet de loi 78, Loi modifiant la Loi sur l'éducation, la Loi de 1996 sur l'Ordre des enseignantes et des enseignants de l'Ontario et certaines autres lois se rapportant à l'éducation.

ASSOCIATION DES ENSEIGNANTES
ET DES ENSEIGNANTS FRANCO-
ONTARIENS

Le Président (M. Shafiq Qaadri): Bienvenue, mesdames et messieurs et mes collègues, à cette séance du comité permanent de la politique sociale. Aujourd'hui, nous étudions et examinons le projet de loi 78, Loi modifiant la Loi sur l'éducation. Notre premier présentateur est M. Paul Taillefer, le président de l'Association des enseignantes et des enseignants franco-ontariens.

Monsieur Taillefer et votre collègue, je voudrais vous informer que vous avez un total de 12 minutes pour votre présentation et pour des questions et commentaires de mes collègues. S'il vous plaît, commencez.

M. Paul Taillefer: L'Association des enseignantes et des enseignants franco-ontariens est un syndicat qui représente environ 7 000 membres du personnel enseignant, administratif et de soutien professionnel qui travaille au sein de conseils scolaires et pour d'autres employeurs francophones en Ontario. Nous remercions le comité permanent de la politique sociale d'accueillir et de considérer les recommandations de l'AEFO.

Le projet de loi 78 reflète l'objectif du ministère de l'Éducation d'améliorer la réussite des élèves à l'échelle de la province. L'AEFO applaudit les efforts du gouvernement dans ce domaine et est d'avis qu'il est impérieux pour la ministre d'assurer la mise en oeuvre de ce projet de loi.

Le projet comporte plusieurs éléments positifs, entre autres l'ajout de journées pédagogiques, l'augmentation des sièges au conseil de l'Ordre, et le programme d'insertion professionnelle pour le nouveau personnel enseignant. Néanmoins, l'AEFO est d'avis que le projet de loi 78 contient des lacunes importantes et tient à faire part de ses préoccupations face à celles-ci, afin que le gouvernement puisse prendre les moyens nécessaires pour que tous les aspects du projet de loi 78 s'inscrivent dans une optique de respect du professionnalisme des enseignantes et des enseignants, des travailleuses et des travailleurs en éducation, tout en visant l'excellence du système d'éducation de l'Ontario.

Le mémoire est très complet. Je vais passer à travers de certaines choses qui sont importantes pour nous dans le mémoire.

Au niveau des journées pédagogiques, l'ajout de deux journées pédagogiques est certainement un changement positif, mais nous croyons qu'il devrait être bonifié ayant déjà eu pré-1998 neuf journées pédagogiques. Avec toutes les nouvelles initiatives mises en place au cours des dernières années, l'AEFO est d'avis que le calendrier scolaire devrait comporter neuf journées pédagogiques.

Au niveau des travailleurs et des travailleuses qui sont dans les écoles et les conseils scolaires, qui jouent aussi un rôle important dans le rendement des élèves et sur le plan d'une variété de services livrés à l'ensemble de la population étudiante, entre autres les éducatrices, les éducateurs, les secrétaires, les travailleuses sociales, les travailleurs sociaux, les informaticiennes, les informaticiens etc., l'AEFO recommande que les activités organisées dans le cadre des journées pédagogiques ciblent aussi les travailleuses et les travailleurs en éducation, car ils font partie d'un ensemble de personnel qui rend des services importants aux élèves dans nos écoles.

Au niveau du programme d'insertion professionnelle des nouvelles enseignantes et des nouveaux enseignants, la mise en place de ce programme d'insertion professionnelle aura beaucoup de retombées positives pour les débutantes et les débutants, et ils et elles se sentiront appuyés par ce programme de mentorat. Toutefois, il faut assurer le développement d'un programme de mentorat adéquat, ainsi que la formation des membres du personnel enseignant qui assumeront la tâche d'encadrer ces débutantes et les débutants. Il faut donc prévoir un financement adéquat de ce programme de manière à ce que le nouveau membre du personnel enseignant et son mentor puissent tous deux bénéficier de temps à con-

sacrer aux divers volets du programme d'insertion professionnelle dans le cadre de la journée scolaire.

Nous recommandons donc que les lignes directrices de la ministre à cet égard soient explicites à savoir que, premièrement, la participation au programme d'insertion professionnelle à titre de mentor soit strictement volontaire de la part du personnel enseignant; deuxièmement, que le rôle et les responsabilités du mentor ne soient pas reconnus comme ou réputés être une des normes de la profession enseignante, un énoncé de compétence d'une enseignante ou d'un enseignant ou un indicateur de rendement; et troisièmement, que l'on finance ce programme de manière à ce que les responsabilités qui y seraient reliées soient reconnues dans l'assignation de la tâche.

De plus, afin d'assurer le succès de ce programme, nous croyons que le travail d'équipe est important. Nous croyons, au niveau de choix d'activités, les volets du programme d'insertion professionnelle, que ce ne soit pas strictement la direction d'école qui ait le droit de regard sur ceux. À cet effet, nous recommandons de radier l'article 269 et de le remplacer par le texte qui suit :

« La direction d'école, le nouveau membre du personnel enseignant et l'enseignante ou l'enseignant qui assumera le rôle de mentor, décident ensemble à quels volets du programme d'insertion professionnelle le nouveau membre participera, au maximum deux mois après le jour où la nouvelle enseignante ou le nouvel enseignant a commencé à enseigner pour la première fois. »

Cette dernière disposition est en fonction du fait que le programme d'insertion professionnelle est d'un an, alors il est important que cette personne reçoive les appuis le plus tôt possible dans cette année.

L'évaluation du rendement des nouveaux membres doit s'intégrer bien au programme existant. Afin d'assurer un processus d'évaluation juste et équitable qui favorise l'épanouissement professionnel et qui soit à la fois formatif, rassurant et positif, l'AEFO recommande que le gouvernement donne suite aux 11 positions adoptées par consensus par le Groupe de travail mixte sur le système d'évaluation du rendement du personnel enseignant, et vous avez en annexe à notre mémoire une copie de cette position.

L'AEFO est également d'avis qu'il faut maintenir un dialogue constant au sujet du processus d'évaluation du rendement pour assurer que ce processus demeure pertinent et efficace.

Alors, nous recommandons le maintien de la Table de concertation sur le perfectionnement professionnel du personnel enseignant afin de revoir et d'améliorer, sur une base continue, le processus d'évaluation du rendement du personnel enseignant.

Au niveau des sièges à l'Ordre, nous considérons l'augmentation des six sièges réservés au personnel enseignant comme étant une bonne nouvelle. C'est important, nous croyons, d'être majoritaire au sein de notre conseil d'administration. Mais nous estimons aussi que la représentation des francophones devrait être accrue afin de permettre à l'Ordre de mieux remplir son mandat à

l'égard de ses membres francophones et la communauté de langue française. L'ancien ministre de l'Éducation, Gerard Kennedy, avait d'ailleurs annoncé un engagement en ce sens lors du Congrès d'orientation 2006 à l'AEFO en mars dernier.

Alors, nous recommandons qu'un des six nouveaux sièges pour le personnel enseignant au sein du conseil de l'Ordre des enseignantes et des enseignants de l'Ontario soit réservé aux enseignants qui travaillent dans les écoles de langue française.

Aussi, pour que le travail de l'Ordre, au niveau des francophones, se fasse de façon adéquate, nous recommandons qu'au moins quatre membres nommés au sein du conseil de l'Ordre aient la capacité de travailler et en français et en anglais.

Pour ce qui est du mandat, pour assurer qu'il y ait une continuité d'expérience et d'expertise acquise par les membres du conseil, nous recommandons que l'on maintienne à 10 ans la durée maximale du mandat des membres élus du conseil de l'Ordre des enseignantes et des enseignants de l'Ontario.

Nous voulons aussi traiter de la question de la protection contre l'intimidation. Certains de nos membres qui oeuvrent dans les écoles et qui sont membres du conseil d'administration de l'Ordre ne sont pas épaulés de façon adéquate par leur conseil scolaire. Nous croyons qu'il devrait y avoir des protections contre toute forme d'intimidation reliée à cette tâche à l'Ordre. Nous recommandons qu'on s'inspire de la Loi sur les relations de travail de l'Ontario pour prévoir des conséquences pour des employeurs qui ne respectent pas le droit d'une employée ou d'un employé d'exercer des droits que lui confère une loi.

Sur la question de conflit d'intérêts, nous croyons que tous les membres doivent avoir droit, sans égard à leur engagement au sein de leur syndicat, à la participation à l'Ordre des enseignantes et des enseignants. Nous recommandons que le comité de protection de l'intérêt public ne soit pas mis en place car nous croyons qu'il fait essentiellement le même rôle que l'Ordre, et pour éviter toute confusion, nous croyons que c'est une recommandation importante.

Au niveau des règlements, le projet de loi 78 transforme en règlements plusieurs articles importants de la loi actuelle, ce qui accorde au Conseil des ministres de l'Éducation un pouvoir important en ce qui a trait à l'approbation et à la modification desdits règlements. Étant donné qu'il est impossible de prévoir comment ces pouvoirs seront exercés dans le futur, l'AEFO est préoccupée par la possibilité que d'éventuels gouvernements en abusent. Alors, nous recommandons que le projet de loi 78 comprenne une clause garantissant aux divers intervenants en éducation le droit de réagir aux règlements proposés avant leur adoption.

En conclusion, nous croyons que le projet de loi a beaucoup de choses qui seront bénéfiques pour le personnel enseignant, mais comme nous l'avons souligné dans notre mémoire, il y a certainement des choses que nous aimerons que le comité permanent de la politique sociale tienne compte pour améliorer le projet de loi.

Le Président: Merci, M. Taillefer, pour votre présentation.

We'll begin with the first question from the PC side.

M. John O'Toole (Durham): Excusez-moi. Je ne parle pas français. Very quickly—

The Chair: Thirty-five seconds.

Mr. O'Toole: Thirty-five seconds. Is my time up yet?

In estimates committee this past week I asked the minister to respond to the funding of the French-language secondary schools within my riding. I have a response; not really encouraging, except that the staff are encouraged to continue to work with the boards to fully realize their plan.

There's sufficient funding in the French-language panel, which you would know was set up when we were government. You'd realize that that's one of the things I think we achieved.

There are really two questions there. Do you recognize that the four panels, French and English, public and separate, were set up by the previous government? Some would criticize that. Secondly—

The Chair: Mr. O'Toole, with respect, your questions will have to remain rhetorical for now. I now move it to the NDP side.

1630

M. Rosario Marchese (Trinity-Spadina): Bonjour. J'ai juste une question rapide. Vous savez que le gouvernement a décidé de créer un comité de protection de l'intérêt public.

M. Taillefer: Oui.

M. Marchese: C'est-à-dire que le ministre va nommer au comité de trois à cinq personnes. Quant à moi, c'est un gaspillage d'argent. Que pensez-vous de cela?

M. Taillefer: Nous sommes du même avis. L'Ordre, dans sa charte, est un instrument qui oeuvre à l'intérêt du public. Alors, nous ne croyons pas que nous devons dédoubler les choses que fait présentement l'Ordre des enseignantes et des enseignants.

M. Khalil Ramal (London-Fanshawe): Merci beaucoup pour votre présentation. Je pense maintenant que la ministre de l'Éducation travaille pour établir un mécanisme spécial pour les élèves et les écoles francophones de l'Ontario. Alors, j'espère que ce sera bientôt.

M. Taillefer: Oui. Le comité permanent se réunira je crois pour la première fois le 1^{er} juin. Nous avons certainement hâte de siéger au comité pour voir ce que nous pouvons faire ensemble en partenariat pour améliorer le sort de nos élèves et le système d'éducation de langue française.

Le Président: Merci, monsieur Taillefer, pour votre contribution aujourd'hui.

ASSOCIATION DES CONSEILLÈRES ET DES CONSEILLERS DES ÉCOLES PUBLIQUES DE L'ONTARIO

Le Président: J'invite maintenant notre prochaine presenture, Louise Pinet, directrice exécutive de l'Association des conseillères et des conseillers des écoles

publiques de l'Ontario. Bienvenue, madame. S'il vous plaît, commencez.

M^{me} Louise Pinet: Merci, monsieur le Président, membres du comité permanent de la politique sociale, mesdames et messieurs. Au nom des membres de l'Association des conseillères et des conseillers des écoles publiques de l'Ontario, il me fait plaisir de vous présenter aujourd'hui les observations de l'ACÉPO en ce qui a trait au projet de loi 78.

L'ACÉPO représente les conseillères et les conseillers scolaires des quatre conseils scolaires publics de langue française. Lors de leur création en 1998, les conseils publics de langue française accueillaient 19,4 % des élèves de langue française de l'Ontario, et en 2005 ils en accueillent 24,6 %. C'est donc dire que nous sommes en croissance.

Quatre conseils scolaires publics de langue française existent pour desservir tout l'Ontario. Ainsi le Conseil scolaire de district du Centre-Sud-Ouest, dont le siège social est à Toronto, couvre une superficie de plus de 68 000 kilomètres carrés, deux fois la taille de la Belgique. Par ailleurs, dans le nord, de grands espaces entre les centres habités ne sont pas inclus dans le territoire reconnu des conseils scolaires, ce qui laisse croire que leur territoire est bien plus petit qu'il ne l'est en réalité.

En Ontario, peuvent inscrire leurs enfants dans les écoles de langue française les parents qui sont citoyens canadiens et qui remplissent une des conditions suivantes : leur première langue apprise et encore comprise est le français; ils ont reçu leur instruction élémentaire en français au Canada; un autre de leurs enfants a reçu ou reçoit son éducation élémentaire ou secondaire en français au Canada.

Ces éléments d'introduction sont intimement liés aux propos qui suivent. En effet, le réseau d'éducation publique en langue française en est à ses débuts en Ontario. Il n'est pas encore pleinement établi dans la province.

Aucun autre système d'éducation n'a de territoires aussi grands à desservir. La population francophone est dispersée, tant dans les villes que dans le milieu rural. Cette réalité rend plus complexe le rôle des conseillères et des conseillers scolaires du système d'éducation publique de langue française, si on le compare à celui des conseillères et des conseillers des trois autres systèmes d'éducation de la province.

Le rôle du conseil scolaire : il est évident que nous partageons avec nos collègues certaines problématiques, tout comme nous partageons avec eux certains succès. Nous convenons avec l'Ontario Public School Boards' Association des observations suivantes.

L'ACÉPO invite la ministre à élucider ce qui la motive à ajouter cet article touchant la divulgation de renseignements.

L'ACÉPO recommande que le projet de loi soit modifié pour prévoir un processus de consultation des conseils scolaires avant que des règlements soient pris en application de l'article 11.1.

Au sujet de l'article 230.7, l'ACÉPO recommande que cet article de la loi, qui donne à la ministre la compétence

exclusive sans possibilité de révision judiciaire ni de contestation devant les tribunaux, soit abrogé afin que les conseils scolaires puissent avoir un droit d'appel, à l'instar des municipalités.

Toujours au sujet de l'article 11.1, l'ACÉPO recommande que les alinéas (3)a) et b) soient modifiés pour préciser qu'il s'agit bien de résultats ciblés et non pas de résultats atteints.

Au sujet de l'article 207(2), l'ACÉPO recommande que le projet de loi soit modifié pour exclure les élèves conseillères et conseillers de toute réunion tenue à huis clos selon le paragraphe 207(2) de la Loi sur l'éducation.

L'ACÉPO recommande que soit retirée du projet de loi l'obligation de consulter les communautés avant d'établir les honoraires. L'impact de cette exigence serait nettement plus ressenti dans les quatre conseils scolaires publics de langue française que dans les autres conseils, à cause de la grandeur du territoire de chaque conseil et à cause de la dispersion des écoles sur chaque territoire.

Il est vrai que les membres de l'ACÉPO apprécient grandement que le projet de loi assure une reconnaissance du travail accompli par les conseillères et les conseillers scolaires durant le présent mandat, en prévoyant une allocation rétroactive.

Il nous semble aussi qu'il serait opportun de préciser dans la loi que les honoraires ne peuvent être modifiés qu'une seule fois durant le mandat.

J'aimerais ajouter un mot au sujet de l'Ordre des enseignantes et des enseignants de l'Ontario. L'ACÉPO recommande que la composition du conseil d'administration de l'Ordre soit modifiée pour reconnaître équitablement le personnel du réseau d'éducation publique de langue française en lui accordant deux sièges au même titre que les trois autres systèmes d'éducation financés par les fonds publics. Seul le système d'éducation public de langue française n'a qu'un siège au conseil d'administration de l'Ordre.

L'ACÉPO recommande que le système d'éducation publique de langue française ait la même représentation que les autres systèmes d'éducation de l'Ontario. Le projet de loi ne fait pas mention de cette situation.

L'ACÉPO recommande que le projet soit modifié pour prévoir un mécanisme de revue par les pairs pour tous les membres de l'Ordre des enseignantes et des enseignants lorsqu'ils font l'objet de mesures disciplinaires. Cette revue devrait être menée dans la langue de leur choix.

L'ACÉPO appuie en principe les modifications proposées à l'Ordre des enseignantes et des enseignants de l'Ontario.

En dernier lieu, l'ACÉPO félicite le gouvernement pour son projet de loi 78. Ce que nous proposons vise à améliorer un projet déjà solide, et l'ACÉPO a hâte de continuer à travailler avec vous dans la réalisation de l'éducation publique en langue française en Ontario.

Le Président: Merci, madame Pinet. Nous commençons avec le NPD. Monsieur Marchese, approximativement deux minutes, s'il vous plaît.

M. Marchese: Merci, madame Pinet. Une question sur l'article 4. Vous en avez parlé un petit peu. Pour moi

c'est un grand problème, l'introduction de cette section qui parle des règlements concernant les intérêts de la province. C'est la première fois qu'on a vu une telle section qui va centraliser le pouvoir au centre.

Hier, M^{me} Annie Kidder a proposé d'éliminer cette section. Les membres libéraux ont suggéré qu'on va avoir des consultations avec je ne sais pas qui, peut-être avec les conseils scolaires ou des autres; je ne sais pas. M^{me} Kidder a dit que l'on devrait éliminer la section et, après avoir eu les consultations, de parler de si on a besoin d'avoir une telle section. Oui ou non? Que pensez-vous de ça?

M^{me} Pinet: En ajoutant cette section, je pense qu'on peut être sur du terrain nébuleux, étant donné que, de toute évidence, les conseils scolaires reçoivent un mandat provincial dans la mise en oeuvre des projets et d'études des écoles et des services.

En ayant quelque chose qui précise les intérêts de la province, est-ce que cela veut dire que, si on adopte des méthodes qui sont différentes de celles proposées par la province pour la mise en oeuvre d'un projet, c'est problématique? Cela dépend, je pense, du détail et de la façon dont cela est interprété.

En ce moment, ça peut être positif comme ça peut être une difficulté, mais on ne sait vraiment pas ce que ça signifie. Autant, cet élément-là devrait être élucidé comme il l'est, par exemple, au niveau du dossier de l'accès à l'information et des demandes d'information sur tout le personnel et sur le service.

1640

Le Président: Merci. Maintenant à monsieur Ramal; deux minutes, s'il vous plaît.

M. Ramal: Merci beaucoup pour votre présentation. Pourquoi, madame, retirer le projet de loi? Je pense que la ministre a beaucoup consulté avec le peuple de l'Ontario, avec beaucoup d'organisations, spécialement les organisations des francophones de l'Ontario. Vous recommandez retirer ce projet de loi?

M^{me} Pinet: Non, nous n'avons pas demandé de retirer le projet de loi. Nous avons félicité—

M. Ramal: Votre «concern» est qu'il n'y a pas eu beaucoup de consultation sur cette loi?

M^{me} Pinet: Oui. En fait, il y a eu de la consultation. Il y a aussi eu, je pense, des consultations sur d'autres mécanismes de mise en oeuvre.

Je pense qu'il faut être clair: l'ACÉPO appuie le projet de loi. Il y a des éléments que nous voulons faire préciser. Mais nous sommes carrément derrière ce projet de loi.

M. Ramal: Merci.

The Chair: Merci, monsieur Ramal. We'll now move to the PC side.

Mr. O'Toole: Again I apologize that I don't speak French well enough to dialogue.

Section 10, which amends section 170, talks about the hard cap. I'm aware, specifically with the shortage of French-language schools in my riding—how difficult is the hard cap and the flexibility needed by boards to appropriately size without tripling and quadrupling in

grades? Is this a problem in the classroom? How would you as a trustee respond to that?

M^{me} Pinet: Dans les écoles de langue française, déjà on a vu des cours quadruples et des cours triples, et cela est problématique. Il est évident que lorsque l'on met un « cap » ou un taux maximum sur les classes—si on dit à ce moment-là que chaque classe dans une école ne doit pas dépasser tel nombre—il faut s'assurer que l'on puisse avoir des classes qui soient moins que 20. Ce n'est pas le maximum qui est le problème, c'est est-ce que toutes les classes doivent avoir 20 élèves?

Si toutes les classes doivent avoir 20 élèves, à ce moment-là on a une très grande difficulté de mise en oeuvre, parce que pour nous ce ne sera pas des classes quadruples que nous aurons, mais nous aurons de six à sept niveaux par classe, et nous retournons carrément presque au temps où la petite école faisait entièrement tous les niveaux dans une seule salle de classe.

Mr. O'Toole: That pretty well answers my impression of remote and rural schools, where they're trying to serve a community purpose.

Do you have any particular suggestions for amendments here? Our critic, Frank Klees, is here to make improvements to the bill in sections that we're dealing with. The hard cap we've talked about is the need for flexibility at the board level. I'm hearing that from you. There must be special funding attached, specifically when you have as many grade levels within a teaching—it's very difficult for a teacher to provide proper programming.

M^{me} Pinet: Je pense qu'il y a peut-être la possibilité d'avoir et de prévoir une certaine flexibilité au niveau du conseil scolaire. Mais il faut absolument que dans la mise en oeuvre on ne pénalise pas les petites écoles tout comme les très grandes écoles, même si nous n'en avons pas, parce qu'on a placé un système où l'on dit, pas plus de tant d'élèves dans une certaine classe.

Une option qui a été envisagée est de prévoir une flexibilité et de s'assurer que l'on puisse avoir des classes de moins que le max, mais cela coûte plus cher. Si on dit qu'on a un maximum de 20—

The Chair: Thank you, Mr. O'Toole. Merci, madame Pinet, pour votre temps, votre présence et aussi pour votre contribution aujourd'hui.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair: We'll move now to our next presenter, Ms. Donna Marie Kennedy, provincial president of the Ontario English Catholic Teachers' Association. Ms. Kennedy and colleagues, I respectfully remind you that you have 12 minutes in which to make your presentation, which begins now.

Ms. Donna Marie Kennedy: Thank you very much for the opportunity to present today.

First of all, you have our brief. We represent 36,000 women and men who teach in the Catholic school system in the province of Ontario. We have a number of

concerns with the proposed bill. We have concerns with the wide-ranging regulatory powers that will be afforded to the minister if the bill is passed. The checks and balances of Parliament are important to us and public debate about education is important to hear in the House.

OECTA supports local decision-making; we always have. We believe in local autonomy and collective bargaining as well. We feel that Bill 78 moves more and more towards centralized control over education.

One of the big issues for us in this bill of course is the reform of the Ontario College of Teachers. The former Minister of Education indicated his intent to develop regulations to bar local federation representatives from seeking election to the council. We believe that is fundamentally undemocratic and unwarranted, based on the record of councillors. I speak from personal experience as the first chair of the college of teachers. Many federation officers have served in the past. Never has there been any evidence of a conflict of interest or a failure to serve the public interest.

Bargaining and the duty of fair representation rights are held by our provincial organizations and they are not controlled by the locals.

The six new positions designated for teachers on the council is a step in the right direction. However, section 51 of the bill, the oath of office, is unnecessary and redundant. The Ontario College of Teachers Act already dictates that the college has a "duty to serve and protect the public interest."

Section 53, the public interest committee, is without precedent in the province of Ontario and in any other professional body. It is redundant. If the government is speaking about respecting teachers, by establishing this committee it goes against that belief.

Section 52 deals with term limits. Moving to six years from 10 years would be, in our estimation, a grave mistake. We need time for councillors to develop their expertise, their succession planning and allowance for extensions of terms when needed. Already the college council, in its short life, has been extended twice.

We understand that the minister has indicated just recently—I believe yesterday—that there would be peer review for principals and vice-principals. This makes absolutely no sense to us. There is no peer review in any other college. Where does it stop? Then do we have councils of elementary teachers, secondary teachers, librarians and so on? Certainly in any other college, you don't have head nurses dealing with just head nurses. So we see no point in that.

One huge issue for us of course is the new teacher induction program. We were very pleased to see that the OTQT was removed; it was totally ineffective. We would like to see that the bill be amended to ensure that school boards involve local teacher bargaining units in the development of local NTIP plans.

One of the main concerns that we have with this NTIP is the fact that occasional teachers will not have access to the induction programs. That is a serious concern for us and we do hope that is addressed.

We see no point in teacher performance appraisal being a component of NTIP. Mentoring is most effective when it is voluntary and self-directed.

Again, we see no link between NTIP and the college of teachers and see little point in that being recorded at the college. The college does not accredit the NTIP program and we do not understand why that is being reported to the college. There is a disconnect there and we do not see why it is necessary.

We're very pleased to see the restoration of two additional professional development days. It is incredibly important for teachers to have time to discuss with their colleagues both ministry and school board initiatives.

Finally, we welcome the provisions that will ensure reporting on the use of resources by school boards to promote accountability and transparency. That is important for our union, certainly.

We have concerns about adopting and implementing measures in regulation to ensure that school boards achieve student outcomes specified in the regulation. Already there is too much emphasis on testing.

One of the things that we are pleased about is the student trustees; however, we believe that you should broaden the nature of the compensation. The scholarship is too narrow. What happens to those young men and women who are moving directly into the world of work should they choose to sit as a student trustee? So we would ask that that be looked at as well.

I went quickly through that because I did want to give time to questions.

The Chair: Thank you very much, Ms. Kennedy. We have a generous amount of time, about two and a half minutes per side, and we begin with the government side.

1650

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Thanks for your presentation. There's obviously a lot positive in the bill that you like, which I'm pleased to see. I want to pick up on one point, though. I was curious about your reference to being reluctant to swear an oath. I've done a bit of research on this. A number of bodies that regulate professions, including MPPs here at the park, swear an oath to protect the public interest. I'm curious. If you feel it's already clearly happening and there's precedent in many other professional groups for it, why you would be reluctant to do so?

Ms. Kennedy: I think it's redundant. When you sit as a member of the council, you do have a duty to uphold the public interest. It's really unnecessary.

Mr. McMeekin: The public interest committee—how do you feel about that?

Ms. Kennedy: Well, how many oversight committees do you have? It becomes redundant after a while when there's a committee to oversee a committee to oversee a committee. It really should be removed. It's totally unnecessary.

Mr. McMeekin: You don't like that?

Ms. Kennedy: No.

Mr. McMeekin: Okay. That's good. I appreciate that.

The Chair: Any further questions?

Mr. Jeff Leal (Peterborough): You make comments on the Ontario teacher qualifying test as not being effective. If you could just expand upon that.

Ms. Kennedy: First of all, it was unfair. As well, individuals from across the province had to go to different locations, so if you were back home in your own city, you might have to move to another location to take the test. I believe the success rate was 99%. If you ask any young graduate from a faculty of education, they would have told you that it was a total waste of time.

Mr. Leal: Thank you very much.

The Chair: Thirty seconds, Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): Just very quickly, I just wanted to make a point on the public interest committee. I think that one of the things we're dealing with, Donna Marie, is perceptions around the education system in general. I just wonder if you could comment on the reality that we're having to almost over-compensate, in terms of public confidence in the sector, because of the previous government's regime. Can you comment on that?

The Chair: Madam Kennedy, I would invite you to take that up in a further comment. I'll now move to the PC side. Mr. Klees.

Mr. Frank Klees (Oak Ridges): I'm almost tempted to let you answer that question with my time, but I won't go there.

Thank you for your presentation. I'd like to pursue the college of teachers issue, because it is controversial. The fact is that we had a presentation here yesterday by two former registrars who made some very strong statements in terms of what they perceived as a conflict. I asked a question of the current registrar during estimates committee on this issue of classroom teachers on the board. The question I put was, "How many classroom teachers are there on the current college of teachers council?" His response was 13. When I pursued that I asked him to tell me how many of those 13 were actually classroom teachers as most of us would understand it, that is, people actually teaching in the classroom? His response, and I'm reading from the Hansard record, was, "Currently, I have five names who are classroom teachers who actually work directly in a classroom." The others are either defined or are full-time federation appointees who are, in one form or another, working for a teacher union.

This is where the confusion comes in the mind of the public. I think everyone wants—there's no doubt that people want and accept the fact that classroom teachers should have a say in their self-regulatory body, in the same way that doctors and nurses do, but none of the other regulatory bodies have a majority or have their unions overseeing their professional body. We go back to when the college was constituted. You recall well that at that point in time—and that was under the NDP government. It was the Royal Commission on Learning. When the directive came down, the key principle was independence of the council. Here we are now and we see this government wrestling with this, because on the one hand they want to give you whatever you want on this

one because they promised it to you but on the other hand they don't trust you.

The Chair: With respect, thank you, Mr. Klees. I will now move it to the NDP side. Again two and a half minutes.

Mr. Marchese: Just to pick up on what Ms. Wynne was saying because I think it's a very useful question: She said that the reason they've introduced the public interest committee—I'm paraphrasing I hope correctly—is because of this perception of the educational system in general, meaning possibly a negative perception, so they're overcompensating for the ill generated by the previous government.

I find this committee an egregious waste of bureaucracy. We are broke, we don't have money, yet they will find money to appoint a three- to five-person panel with a bureaucracy because they can't advise the teachers' college without a bureaucracy, I'm assuming, because it's complicated. Do you want to respond to that question and maybe mine, in terms of how I laid it out?

Ms. Kennedy: It's unfortunate that the political parties have used a lot of rhetoric around the college of teachers. It's unnecessary. I totally agree with you, Mr. Marchese, however. This peer group is totally unnecessary. You already have appointed members who sit around the council and you have elected members who sit around the council and they are quite capable of administrating the work of the council. It's unnecessary to have another oversight body. It makes no sense.

Mr. Marchese: I think so too.

Section 4 is of serious concern and you made reference to it; it's 11.1. I tried to read your document. It's the section that deals with the regulation re provincial interest. You made reference to it and in your document you speak strongly against it. How much is OECTA against this, and is it so important that you're going to be reminding all these members of the Liberal government that you're going to fight to the wall on this or is it simply a kind of reaction, "Yes, this could centralize powers in the hands of the government but if they pass it, what can you do?"

Ms. Kennedy: We're very concerned about the centralization of power in Toronto in all issues. It's a concern for us. What happens in Moosonee is totally different from what happens in Toronto and you can't compare the two. There are distinct differences across this province and we do not see the necessity—

The Chair: Thank you, Ms. Kennedy, on behalf of the Ontario English Catholic Teachers' Association, for your presence and your submission.

ONTARIO COLLEGE OF TEACHERS

ORDRE DES ENSEIGNANTES ET DES ENSEIGNANTS

The Chair: We'll now move to our next presenter, Marilyn Laframboise, council chair of the Ontario College of Teachers, and colleagues.

Mr. McMeekin: While that's happening, because the suggestion was made that other colleges in Ontario don't have a majority representation of the various professions—

The Chair: Mr. McMeekin, if it's a point of order, please raise it as such.

Mr. McMeekin: On a point of order, Mr. Chair: I want to do some research.

The Chair: Yes, please. If it's a research directive, please do.

Mr. McMeekin: I want to get the figures on nurses, pharmacists, social workers and lawyer councils, because I understand that in every case the majority are the professionals so named.

The Chair: Your research directive has been duly noted. We now move to our next presenters.

Mr. Klees: On a point of order, Mr. Chair: I would like to have that research supplemented by adding to it the component of any regulatory college that may well have a majority number of union representatives—that is, in the case of doctors, the Ontario Medical Association or the RNAO. I would like to have that component added to the research to get to the heart of the point that we were making in this discussion.

The Chair: Research officer Johnston has noted that.

Mr. Marchese: Could I ask members, if they have questions by way of research, that we leave it to the end? We have a lot of deputants and we're behind.

The Chair: You may certainly ask, Mr. Marchese.

We now move to our next presenters, the Ontario College of Teachers, Marilyn Laframboise and colleagues. I remind you that you have 12 minutes in which to make your questions and comments. Please begin.

M^{me} Marilyn Laframboise: Je tiens à vous remercier de me donner l'occasion de vous parler des changements législatifs proposés par le projet de loi 78, qui modifiera de façon importante la régie et l'exploitation de l'Ordre des enseignantes et des enseignants de l'Ontario.

1700

Je m'appelle Marilyn Laframboise et je suis enseignante, ainsi que présidente du conseil de l'Ordre. J'aimerais aussi vous présenter trois autres membres du conseil qui seront heureux de répondre à vos questions suite à ma présentation: Nancy Hutcheson, vice-présidente de l'Ordre et enseignante; Garry Humphreys, membre nommé du conseil; et Doug Wilson, registraire de l'Ordre.

Au cours des prochaines minutes, je partagerai avec vous quelques notions et points d'intérêt sur ce que ce projet de loi 78 suggère, sur ce qu'il signifie pour notre organisme d'autoréglementation et sur la façon dont il touchera plus de 200 000 enseignantes et enseignants.

L'Ordre des enseignantes et des enseignants de l'Ontario a pour mandat de régir la profession enseignante dans l'intérêt du public. Créé en mai 1997 à la suite des recommandations de la Commission royale sur l'éducation, l'Ordre a des pouvoirs et responsabilités qui sont énoncés dans la Loi de 1996 sur l'Ordre des

enseignantes et des enseignants de l'Ontario et son règlement d'application, ainsi que dans les règlements administratifs de l'Ordre.

En vertu de la loi, il est de notre devoir d'enregistrer et de certifier les membres, et d'examiner les allégations de faute professionnelle, d'incompétence et d'inaptitude.

Nous avons aussi la responsabilité de veiller à ce que les membres de la profession répondent à nos normes élevées d'exercice et de déontologie, avant même qu'ils commencent à enseigner et tout au long de leur carrière.

L'Ordre est l'organisme d'autoréglementation qui compte le plus grand nombre de membres au Canada. Les enseignantes et enseignants à temps plein et à temps partiel, ainsi que les directeurs adjoints, les directeurs d'école, les agents de supervision, les directeurs d'éducation, les instructeurs de collège et les professeurs d'université, hommes et femmes, sont des membres de l'Ordre. En tout, nous comptons plus de 200 000 membres qui enseignent aux élèves ou gèrent des écoles privées et publiques dans toute la province. En fait, pour avoir le droit d'enseigner dans une école financée par les fonds publics, il faut être membre de l'Ordre.

Nous prenons très sérieusement les responsabilités qui nous incombent tant envers nos membres qu'envers le public.

When the former Minister of Education said early in 2004 that he wanted to revitalize the college, we acted quickly to form an ad hoc committee to consult with our members, education partners and the public.

In October of that year, we presented a report to the minister after extensive consultation with our members, education stakeholders, regulatory bodies and community groups. The college council made recommendations to the minister based on seven areas identified in his discussion paper. We were not invited to discuss our recommendations. This past March, the minister introduced Bill 78.

There are 31 members on the college's council now. Seventeen are elected by their peers. Of those, 13 are deemed classroom teachers. Currently, eight of those are classroom teachers, two are occasional teachers and three are released for federation duties. The government appoints the other 14 members of council.

In its report to the minister, the college recommended that there be 33 members—23 elected and 10 appointed. We wanted to ensure that the majority of council members were professional educators. We also wanted a better reflection of Ontario's publicly funded French and English school systems. We recommended an increase in the number of French-speaking council members to four elected and two appointed.

Bill 78, if passed, would add six more classroom teachers to the council, bringing the total to 37, including 23 elected and 14 appointed positions. We support the additions, but we also recognize that the nature of the positions themselves will be determined in regulation.

For the record, we would still like to see more French-language representatives. This would greatly enhance our ability to hold hearings with panels constituted in French, which is a requirement under the act.

As it stands now, council members are elected for three-year terms. A member cannot serve for more than 10 consecutive years. Under Bill 78, council service would be limited to six years. We think that's wrong.

Experienced members provide a significant service to the profession and to the public. They also provide continuity between successive councils. In addition, there would be no provision for an extension in the life of the council—currently provided for in our act—in the event that one was needed. In fact, the six-month extension has been required twice, including this year as the college celebrates its ninth anniversary. That would not be allowed under the new legislation as it stands, and we disagree with this change.

Bill 78 calls for the creation of a new public interest committee to ensure that the college is carrying out its duty to serve the public interest. The minister would appoint up to five members to the committee, none of whom could be licensed college members. All of the details associated with the public interest committee's functional mandate have been left to regulation. Not knowing, as yet, what the committee's scope will be, we are unable to say how its work may overlap or duplicate the work of the college. We have to wonder why a self-regulatory body whose mandate to protect the public interest is enshrined in law even needs a watchdog group. No other Ontario self-regulatory body is subject to oversight by a comparable committee.

Bill 78 proposes that all elected and appointed council members swear an oath of office. The bill also makes provision for regulations to create conflict-of-interest rules. While we agree that council must operate without real or apparent conflicts of interest, I can assure you that council members, elected and appointed, have always fulfilled their statutory obligations to serve and protect the public interest without regard for individual political interests. Vigorous, healthy debate comes from participants whose backgrounds, roles and perspectives on education differ. The best decisions are the result of considering various points of view.

In our report to the government, we recommended the following:

The provincially elected leaders and those employed by provincial stakeholder organizations be ineligible to seek election to or accept a public appointment to the college council. We stand by that.

We're pleased to see that a new teacher induction program will be mandatory in Ontario school boards. Three years ago, the college recommended a similar program to the government after listening closely to newly certified teachers, conducting further research and consulting broadly with education stakeholders. However, we are concerned that the proposed definition of "new teacher" prohibits thousands of new teachers from taking part in the program. For example, teachers who aren't hired into permanent jobs in their first two years would not benefit, nor would most occasional teachers or any new teachers employed by private schools.

Bill 78 would also amend the Ontario College of Teachers Act to ensure that the college's registration processes are fair and conducted "in a manner such that any decisions made with respect to an applicant are transparent to and understandable by that applicant, with due regard to his or her individual circumstances."

We believe that our registration procedures are fair, open and transparent now. If the college registrar turns down a prospective applicant, he must first write that person and give the reasons. The applicant may then request a review by the college's registration appeals committee. The committee can uphold, overturn or amend the decision of the registrar. The applicant is then entitled to written reasons for the committee's decision.

Of the 60,000 or so applicants from over 105 countries who applied for licences between 2001 and 2005, only 243 asked for an appeal. Of those, 142 were denied certification while 101 were licensed when they met the certification requirements after further study or training. These procedures enable the college, as the regulator of the teaching profession in Ontario, to serve and protect the public interest.

We are committed to working with other Ontario professional regulators to ensure that registration processes are responsive to the needs of internationally trained professionals.

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In conclusion, what you're considering in Bill 78 today departs from what the college envisioned and recommended to the government. We support some changes, such as help for new teachers and the expansion of council. We disagree with the idea of a public interest committee. And we remain cautiously optimistic that the regulations that flow from the legislation will enable us to continue to meet our mandate to serve the public interest.

Merci pour l'occasion de vous adresser la parole aujourd'hui. Thank you.

The Chair: Merci, madame Laframboise. We begin with the PC Party. We're looking at 20 seconds each, gentlemen.

Mr. Klees: I just want to ask you very quickly why you feel that the government has in fact put this committee in place. Is it that they don't trust the elected members and the appointed members to the council to do their job? Why would they want this appeals committee?

The Chair: You might want to take that up next, Mr. Marchese, please.

Mr. Marchese: I thank you for your position on the public interest committee. I have strong feelings in that regard. I'm convinced, with all of your lobbying, that we'll be able to convince the government to eliminate it as well.

Do you have an opinion on section 4, which speaks about regulations re the provincial interest?

Ms. Laframboise: I wouldn't have a comment on that. No.

Mr. Marchese: None of you do?

Mr. Doug Wilson: Can you give us a definition of what you mean?

Mr. Marchese: I'm sorry. I presume you read the bill, so I just assumed—

Mr. Wilson: Yes, I have read the bill.

Mr. Marchese: This is the section that deals with regulations re the provincial interest for the government—

The Chair: With respect, Mr. Marchese, we'll have to offer it to the government side.

Mr. McMeekin, 20 seconds please.

Mr. McMeekin: A great presentation. Thank you. Merci.

The Chair: Thank you very much, Madame Laframboise and the Ontario College of Teachers colleagues.

YORK REGION DISTRICT SCHOOL BOARD

The Chair: We now move to our next presenter, Mr. Bill Crothers, the chair of the York Region District School Board. Welcome. As you've seen, the protocol is that you have 12 minutes in which to make your presentation. Any time remaining will be distributed evenly, strictly evenly, amongst the parties afterward. Your time begins now.

Mr. Bill Crothers: Thank you very much. As you indicated, my name is Bill Crothers. I am the chair of the York Region District School Board. If I could put that into a little bit of context, our board is the third-largest in the province, with approximately 114,000 students from JK to grade 12. I've been a trustee in my board going on 18 years. I am in my 14th year as the chair of the board. My director of education, Mr. Bill Hogarth, as well as being the longest-serving director of education in the province, is probably the most respected director of education in the province. I think our board is viewed as being the most progressive and innovative of school boards in the province.

From my perspective, Bill 78 does a number of things, including the following.

It returns to regulation a number of items that properly belong in regulation rather than legislation.

It prescribes to the minister the right to articulate additional requirements, through regulations, to school boards relating to student achievement.

It provides expanded privileges to student trustees.

It alters the college of teachers through amendments to the Ontario College of Teachers Act.

It provides for increased authority of the minister to investigate a board's affairs, as well as other changes.

While it's easy for anyone to say that they would do things differently, it is my belief, and that of my board, that it is not our role to design legislation but that we do have a responsibility to provide advice regarding the impact the proposed legislation will have on the students whom we have a responsibility to educate.

In our view, this legislation provides sound changes to education in the province of Ontario. It is our view that

there is one area that truly needs to be amended, another in which it is in education's best interest to be amended, and a couple of areas that are perceived as being threatening by some boards and probably would benefit from some clarification.

I'd like to start with the issue that I believe needs to be amended. It concerns student trustees. The York Region District School Board was the second board in the province to implement student trustees back in 1993. Our current student trustees are numbers 21 and 22 to serve at our board table. Collectively, the student trustees have been among the best ambassadors for our board, and we support all of the provisions within Bill 78 regarding student trustees save one. We do not believe that they should attend private sessions of the board.

I should articulate that our position has absolutely nothing to do with the integrity or the ability of the students. In our board they have already established intellectual and responsibility parity with the municipally elected trustees on the board. Our concern rests solely on the authority figure relationship between student and teacher or administrator, and the potential for a student trustee being in a position to be privy to information and therefore subject to pressure to disclose that information to an authority figure based upon information discussed in those sessions, whether it be contract negotiations, property acquisitions or school closures, litigation affecting the board or personal or personnel issues. We believe it is fundamentally wrong to place a student in that situation. I think we would also ask the question: Why would anybody want to put our young students in that situation?

With reference to the Ontario College of Teachers, one of the amendments to the Ontario College of Teachers Act increases the number of elected members of the college from 17 to 23. One assumes from the proposed amendments that the number of school administrators on the college would remain at one. We think this is problematic from the perspective that the legislation requires that the same individual cannot sit on both the investigation committee and the discipline committee, meaning that for any complaint registered against a school administrator, one of those two committees will not have an experienced administrator sitting on the committee, unless one is among the 14 members appointed by the minister. Sadly, today too many school administrators are feeling under pressure of complaints being lodged against them, such feelings being aggravated by the belief that their jury does not have a peer component.

It is our belief that most research data suggests that student performance in schools is in direct relationship to the quality of leadership in the school. We think it is in the best interests of our provincial school systems to be seen to be treating our principals with the same degree of fairness that we do our teachers.

My director of education tends to want to use a sports analogy to describe the situation. The analogy he uses is the current situation in the National Hockey League and the changes that occurred in the last year. He relates to

the fact that those teams that have adapted to the changes are the ones that were successful at the end of the year. The ones that did not adapt to the changes are the ones that were not doing very well by the end of the year.

His corollary is that the roles that have undergone the greatest changes in education in the past decade are those of the principals and the superintendents. Their responsibility has been to prod improvements in others, and that has left them very vulnerable to being the source of grievances and complaints, and they feel tremendously under attack.

Some other concerns that I articulated earlier: Many of my trustee colleagues and some board administrators from other boards around the province have expressed concern with a couple of the amendments to the Education Act. The first are those regarding the collection of personal data and the clause that excludes the minister from the requirements of the freedom of information act. The whole notion of collection of personal information is offensive to some people and it tends to frighten others.

The other area concerns the rights of the minister to instigate an investigation of a board with subsequent reports and, if necessary, directions to the board to comply with regulations and, again if necessary, to take over the board. Again, many of my colleagues around the province would like to see some mechanism of appeal to the decision of the minister.

I do not share either of those concerns, and neither does my board. In fact, the prevailing attitude of the trustees of my board is that if trustees paid more attention to their responsibilities, they would not be subject to any investigation. Nevertheless, it is probably in the government's best interest to re-examine these two areas to determine that the provisions are not excessive and find ways to assure boards that they cannot be subject to abuse.

I'm also of the opinion that most of those kinds of concerns emanate disproportionately from those boards that have experienced governance difficulties or an inability to adjust to changing funding or regulations. Most of the boards that in fact are doing an exemplary job of educating students will have no trouble working within this legislation.

We completely support the movement of many areas from legislation to regulation. It is very much in the interest of our students that programs or funding can be adjusted fairly quickly to respond to the context in which school systems operate today. Rather than complain that control is being centralized, as some are suggesting, we would suggest that today we have more flexibility than we have ever had. Perhaps that is because almost all of our priorities are consistent with those of the ministry. The reality is that we truly feel that we will be in an even better situation with these amendments than we are today. Likewise, we are completely comfortable with the introduction of the notion that we can be held accountable for how well our students learn, in the same way that we are accountable today for how we spend our money.

Thank you very much, Mr. Chair.

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The Chair: Thank you, Mr. Crothers. We'll have about 90 seconds per side, beginning with Mr. Marchese of the NDP.

Mr. Marchese: Thank you, Mr. Crothers. You talk about principals in the context of the college of teachers. They are the ones who are providing the supervision for teachers, as you know, in the induction program. But there's no mention of principals at all in the bill in terms of who supervises them. Do you agree that there should be a section that says someone should be doing a review of the principals—being as important as you believe they are?

Mr. Crothers: I think the assumption would be that the principals would in fact be involved in it, whether it's in the legislation or not. I don't know who else would.

Mr. Marchese: And who would supervise them, then? Who's doing the reviews? Do you know?

Mr. Crothers: I have no idea.

Mr. Marchese: About 25 seconds, you said, Chair?

The Chair: You still have quite a bit of time—a minute.

Mr. Marchese: Oh, I'm sorry. I didn't hear you very well.

You talked about section 4, where you were saying that you have a lot of flexibility, in fact more than ever. You said that if the government, under this new regulation to provide a provincial interest, where it says, "The Lieutenant Governor in Council may make regulations prescribing, respecting and governing the duties of boards, so as to further and promote the provincial interest in education"—and it outlines a whole list of areas. You're saying that's okay, according to you and your fellow trustees.

Mr. Crothers: It doesn't bother me at all. Our interests will be the same as the provincial interests.

Mr. Marchese: Are you speaking for the other trustees as well?

Mr. Crothers: Of my board I am, yes.

Mr. Marchese: Is that a position your trustees have taken?

Mr. Crothers: Yes. They have all seen the copy of this presentation and they have all accepted and agreed with it.

The Chair: Thank you, Mr. Marchese. We'll move to the Liberal side.

Mr. McMeekin: Thank you, Mr. Chairman. Mr. Crothers, are you the same Bill Crothers who ran in Tokyo in 1964 and won a silver medal in the 800 metres?

Mr. Crothers: Are you as old as I am? Yes, I am.

Mr. McMeekin: Wow, I remember that. Today is athlete affirmation day here, so I just wanted to get that out there.

Mr. Crothers: I'm almost a colleague of Mr. Fonseca.

Mr. McMeekin: The presentation was great; so was your silver medal run. I'm old enough to remember that.

I want to just focus on your comment about regulations, that you think a lot of material should be in

regulations, rather than in the act. We see that as building in flexibility with the ministry and collaborating with the boards. Is that where you're coming from?

Mr. Crothers: Two things. One is that it's much easier to change a regulation than it is a piece of legislation. Number two, from a school board's perspective it's nice to be able to adapt to changes in the context in which we operate through regulation. We also happen to believe that there will be exactly the same kind of pressures on government and ministry officials on the changing of the regulations. There may not be a formal procedure, but there sure as heck is an informal procedure and pressure that would be placed upon the Minister of Education in making those kinds of regulations. So we have no difficulty with the movement into regulation and we think it actually strengthens it.

Mr. McMeekin: Mr. Crothers, I appreciate that very much. Thank you.

The Chair: We'll move now to the PC side.

Mr. Klees: Mr. Crothers, thank you for being here. I want to thank you for your leadership on the board; I want to thank, through you, Mr. Hogarth as well. We are very proud of the work that's being done in York region.

I have a quick question for you. During estimates, I inquired of the minister the census data that's being used by the ministry to allocate learning opportunities grants and language grants to boards today. They replied, and it looks as though the census that is being used is 1996. Your board has incredible growth, and I'd just be interested to know from you if the ministry should be taking a very close look at what they're using to allocate these kinds of grants to boards to make it more equitable.

Mr. Crothers: That's outside the piece of legislation we're dealing with, but I would agree completely with that from a very personal perspective, in that the communities in Peel and York region are undergoing the greatest transitions in the province. The change in the demographics of the province today—in the years 2001 through to 2006—is significantly different than it was in 1996 and even 2001, and we think that those things should be reflected in the data. But we're still doing very well. The fact that they're using that old data, I think, shortchanges new Canadian students in our board.

Mr. Klees: Would you be willing to—

The Chair: Thank you, Mr. Klees, and as well, thank you to you, Mr. Crothers, for your contributions, past and present.

KEVIN WIENER

The Chair: We now move to our next presenter, Mr. Kevin Wiener. I'd ask you, sir, to come forward. As you know, you have 10 minutes to make your presentation. Mr. Wiener comes to us in his capacity as a private individual. Your time begins now.

Mr. Kevin Wiener: Thank you, Mr. Chair. As was said, I don't represent any organizations, associations or special interests. I'm just here because I'm interested in what's happening in this bill, and most specifically in the

part of the bill, section 55, that has to do with student trustees.

I believe that student trustees are a very integral part of the system, and I'm glad that they've been instituted. It allows us as students to have a role in making sure that what happens in educational policy is something that we can have a say in. The regulation before was "pupil representatives" and it was very loosely defined within the bill; mostly it was done through regulation. One of the things that I've noticed in this bill is, once again, it's very ill-defined. It's essentially, "The minister may make regulations providing for elected student trustees..." It does make it elected, which is definitely a step in the right direction, as opposed to appointed, but once again, basically everything is up to regulation to happen. This leads to the fact that, unlike in this legislative process where we can go and have input, there's not much we can do to see what's happening in the system.

Basically the three points that I want to address within this part of the bill are about the general knowledge of the fact that we have trustees, the election system that is going to be put in, and student trustee votes.

The first thing that's happening is the student trustee council. Although a very good idea and put in place very well, trustees have definitely gone way beyond their original mandate and are very involved in the trustee board. Unfortunately, a lot of people within the school system aren't even aware that the student trustees exist. I myself didn't find out until just this past year. I had known of the TDSB supercouncil, which is our way of choosing trustees in Toronto, but I didn't even realize we have student trustees. I think that definitely something the government needs to address is making sure that students at large in all the different schools know that they have this way of having input into board policy.

The next part is regarding elections. Essentially what we have right now in the way student trustees are elected is, every board has its own way; sometimes it's direct and sometimes it's indirect. But even in indirect ones, you don't often have it as democratic as it could be. For example, in the TDSB, where I currently have school, what ends up happening is each school sends some representatives to the TDSB supercouncil and then the supercouncil chooses who the trustees are going to be for that year. But once again, because people are not aware of the fact that the supercouncil exists or that we have student trustees, it ends up meaning that in a lot of cases, in my school for instance, the student trustees are not elected, and in some of them it's just whoever finds out about it and takes an interest gets to represent the school. In such a case, we're not actually having the will of the students within this trustee selection process. So we really have to make sure. The biggest step in democracy, of course, is making sure that everyone knows what's going on.

How much time do I have?

The Chair: You have about seven minutes.

Mr. Wiener: All right.

We have to make sure that we can have a democratic process. What I'd advise is that when the government is

making the regulations on having the different elections, that the government include students from around Ontario in the process of deciding how these trustees are going to be elected and what exactly their mandate is going to be within the regulation. Because it's the kind of thing where, unless we have a say in the body that we're trying to have representing ourselves, it's really not as democratic as it could be, so I'd hope we'd be able to have some kind of student committee or some kind of student inclusion in the process of deciding exactly how these trustees are going to work.

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The next part of what I'm talking about has to do with the powers of the student trustee, which in this bill have been somewhat extended. It used to be that student trustees couldn't vote, couldn't move motions, couldn't sit in in camera sessions and anything like that. In the current bill, basically what happens is the student trustee can cast pseudo-votes and motions in that they can request a counted vote, and the vote is recorded as to what the vote is without the student trustee's vote and what it is with the student trustee's vote. Of course, the student trustee's vote isn't binding. In the same way, the student trustee can suggest a motion, and if none of the school trustees choose to move that motion, it goes on record of what the motion suggested was. I think this is good.

I'm going to surprise you. I'm not going to say we should immediately have votes. I understand, of course, that there are a good many legitimate arguments against suddenly giving the vote to student trustees. There are things such as the trustees dealing with litigation or something that may get them into legal wrong. If it was a student trustee's vote that throws it aside, then you might have legal troubles happening to the trustee council because of someone who isn't even of voting age. However, I think it's something that the government definitely has to look to in the future. The fact that suggested motions and recorded votes are on record means that they're able to look through it. So what I'd advise is that we compile these different suggested votes and suggested motions and look at how that affected it; if their votes were radical or if they were definitely intelligent votes that would not have had negative consequences if they had been counted.

I think that as a democracy, especially with low voting levels among students, we want to try to engage students in the democratic process as much as possible. That means we want to be able to see if we are able to have student trustees vote.

The school trustees are elected, but if you look at it, many of the people who are electing the student trustees don't have a vested interest in the education system. They've graduated out of it. They may not have children or maybe their children have graduated, and they're still voting, many times not really aware of the issues within the education system, not really knowing the candidates, whereas the students, who of course have 10 months out of every year in the education system and any change has

a huge impact on them, (a) don't have the proper voting system that there should be and (b) the trustees can't vote.

If you look at any kind of corporation or public body, there is always ample opportunity for those affected by it to get involved. So I'd suggest that we make sure that we can look into a future in which student trustees can have a vote and in which we have a definitely very democratic process that gets down to the grassroots of students and allows students to get involved in educational policy.

What does that leave—three minutes?

The Chair: Two minutes.

Mr. Wiener: Two? All right; I'm done.

The Chair: Thank you, Mr. Wiener. We'll begin with the Liberal side. Mr. Leal, about 30 seconds or so.

Mr. Leal: I'll make it quick. Thanks very much for your presentation. Mr. Wiener, are there any sort of specific amendments you'd like to see in this legislation?

Mr. Wiener: Mainly some kind of council that involves students that would be looking into how we're going to have this democratic process, and a clause essentially promising that the results of this will be compiled and that the issue of student trustee votes would be looked into in a few years. I don't know exactly what the government would want to decide.

The Chair: We move to the PC side.

Mr. Klees: Mr. Wiener, thank you for your presentation. Obviously, you have given a great deal of thought to this issue, and we appreciate your input. I want to quickly ask you if you agree with Mr. Crothers's presentation earlier on the issue of student trustees and his concern that they be included in private sessions and that they should be protected from that.

Mr. Wiener: It's definitely a legitimate concern, especially considering that student trustees range from the end of junior high to all of high school. In some cases, there could be a definite conflict with the authority figure. However, I think we also have to give the students a lot of credit. You have to understand that people who get elected to the trustee positions—it's not the same as the popularity contests of certain student councils—are basically the cream of the crop: people who are really interested and involved. I think, in that particular case—

The Chair: Thank you, Mr. Klees. We'll move to the NDP.

Mr. Marchese: I just want to say that I would have no problem having a student trustee being able to move motions and to vote. I think it would be revolutionarily good for a board to be able to have students have such a power. I'm not sure that people are ready, but I would be prepared to move such an amendment.

The other point I wanted to make is, you say "may" make regulations to elect. Would you rather see language that said "shall"? Is that what you're speaking to? It speaks to a whole list of things.

Mr. Wiener: Yes, it would be nice if it said "shall." I don't believe the government would not make regulations, especially since there are certain regulations within the other—

The Chair: Thank you, Mr. Marchese. We'll have to leave it at that, Mr. Wiener. Thank you very much for your presence and deputation.

ONTARIO MUSIC EDUCATORS' ASSOCIATION

The Chair: We'll now move to our next presenter: Mr. Kevin Merkley, president of the Ontario Music Educators' Association. Please come forward. I once again respectfully remind you that you have 12 minutes in which to make your combined presentation, questions and comments, time beginning now.

Mr. Kevin Merkley: Thank you for the opportunity to be here. My name is Kevin Merkley. I'm the president of the 1,200-member-strong Ontario Music Educators' Association. Our membership comprises certified music teachers dedicated to quality music education in the province, united under a common banner promoting music education as the enlightening, inspiring force that it can be. The Ontario Music Educators' Association is the oldest and largest music association in Canada.

Literacy and numeracy are important components of a child's education, but our students also need to be musically literate. OMEA members have some concerns regarding Bill 78.

First, the new standards expected of boards with regard to literacy and numeracy will possibly take resources away from existing music programs or discourage future investment in music education. There have been no assurances stated against this happening in Bill 78.

Secondly, music and the arts must be included in the regulations to ensure that boards are implementing ministry arts programs. It needs to be made explicit that boards of education must provide every child the opportunity to receive music instruction at the elementary level in each term of the school year.

Thirdly, music education is a key means of keeping students in school, motivated, and contributing members of their school community and the community at large, and the legislation must acknowledge that important fact. Please do not ignore the power of music to reach students who might otherwise be marginalized and not engaged in the learning process.

Fourthly, while it is a laudable initiative, the way in which the small-cap class size is being rolled out is raising concerns. Some adjustment in implementation must be made to ensure that music rooms are not expropriated and that music programs are not marginalized and timetabled out of the school day. In some schools, a single music specialist teacher will not be able to see every class, which will leave some classes without music instruction, or music instruction delivered by a classroom teacher who may not have the background to deliver an adequate music program.

Finally, opportunities for teachers to get assistance in implementing the music curriculum must be included as part of the teacher induction program. It is important that we develop skills with our new teachers so that they have

the confidence and competence to teach effectively the Ontario arts curriculum.

I would like to elaborate on these five regulations being considered.

(1) Collection of personal information—page 1, section 8 of Education Act: With the collection of information on literacy and numeracy and achieving standards, the OMEA needs assurances that music programs will not be further neglected by this collection of data. Budgets within boards will be even more focused on meeting literacy and numeracy standards, and less on the subjects that do not have the same reporting expectations. Literacy and numeracy are important, but we know that students learn in many ways. We need to nurture the whole student and give them quality opportunities to develop literacy in all subjects.

(2) Regulations regarding provincial interest—page 3, section 11.1(2): This portion of Bill 78 outlines that boards implement regulations to ensure that students achieve outcomes specified in those regulations, encourage parent involvement—parent councils—special education, health, form of delivery, frequency and the content of their programs.

This aspect of the bill does not address the whole student. With recent announcements by the ministers of culture and education expressing publicly the power of the arts, the implementation of the arts should be included as an expectation of boards. Even though the Ontario arts curriculum is expected to be implemented, outside of major centres and in rural schools the reality is that many schools do not have qualified music educators or teachers who are comfortable with teaching the arts. This bill ignores the well-being of our students. Music and the arts build character in our students.

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The third point, “Regulations re provincial interest,” page 3, subsection 11.1(3): There is strong evidence that student involvement in music programming improves graduation rates. For many children, music is the reason they get up in the morning and come to school; it is the link with their school community. Their performing groups and music classes keep them engaged, motivated and optimistic, and build character. The arts can provide all of this for many students, but not without well-funded, quality programs delivered by skilled, certified music educators. Improved academics, not just improved literacy and numeracy, will improve graduation rates.

The fourth point, class sizes, page 7, number (4): The OMEA is concerned that if class sizes in the primary division are rigidly enforced without consideration of the implications for our older students, in order to accommodate the extra classes principals will be forced to use music rooms for other purposes, making the music curriculum impossible to deliver, resulting in the reduction and even elimination of music programs.

As well, averaging the class sizes within the primary and junior divisions will create large intermediate classes that exceed 30 students. I have personally experienced grade 7 and 8 classes of 34 to 36 students in a small

classroom full of instruments, music stands and instrument cases, as well as the students. This is clearly not the best way to serve the students in our schools. We should do better for them.

My fifth point is part X.0.1, “New teacher induction,” “Content of program,” page 14, number (2): Our government needs explicitly to make music and the arts included as part of the content of the new teacher induction process. It is well known that many faculties of education are not allocating enough time for their pre-service teachers to gain enough experience in teaching music and the other arts. Most are only able to offer 15 to 24 hours of arts-specific education as part of the one-year teacher education program because of the pressure they feel to focus on literacy and numeracy. Why can they not be taught as part of every subject? This is what teachers are being encouraged to do in our schools.

Many of our classroom teachers or teachers who are new to the profession are expected to teach music as part of their timetable. The province and our school boards need to ensure that music is an integral part of the teacher induction process, especially for the elementary teachers.

The Ontario Music Educators’ Association trusts that this committee will consider carefully what impact the decisions being considered in Bill 78 will have on music and the arts in our schools. At an arts education announcement by the Ministers of Culture and Education last week, Premier McGuinty said that “art gives expression to who we are, what we want to be, where we came from and where we want to go ... the arts are profoundly human.” At the same announcement, the parliamentary assistant to the Minister of Culture, Jennifer Mossop, stated, “Countless research papers note that arts education improves test scores, self-esteem, confidence, problem solving, teamwork and discipline and greater creativity which will equal success for society.”

Let us celebrate music and arts education by supporting and increasing the number of qualified music educators, and let us work together in our shared goal to ensure that our children receive a balanced education. Reading, writing and arithmetic are indeed important; nobody will argue with that. However, a quality, sequential music education is every child’s right.

The Chair: Thank you, Mr. Merkley. We have about 90 seconds each, beginning with the PC side.

Mr. Klees: Thank you very much for your presentation. Could you comment very briefly on the preparation that teachers have? You indicate that teachers are expected to teach music although obviously they haven’t had the preparation for that. Do you have any recommendations in terms of how that can be addressed, should be addressed?

Mr. Merkley: I certainly think there are resources that are in place which are a good first step; for example, the exemplars that were recently published for music in grades 1, 4 and 7. But I think that more professional development opportunities can be established within boards, and that could be something that the ministry could work with boards on.

Also, I think there could be more resources online that could assist teachers. There are already resources, but I think the more resources that are accessible to people who may need the assistance, who don't have necessarily the background to be able to teach it—they would benefit from that. So there are certain things that could be put on the website that would be of assistance too.

Mr. Klees: What about shifting that into teacher training before they graduate from teachers' college? Is there something in teachers' college that should be there as a required curriculum?

The Chair: Thank you, Mr. Klees. We'll move now to the NDP.

Mr. Marchese: He's merciless. So we've got to be quick, right?

You were talking about how capping ought not to be able to squeeze out music space, and I agree with you. Are you aware of any music program being squeezed as a result of capping?

Mr. Merkley: There are schools in TDSB where teachers have been forced out of their rooms.

Mr. Marchese: Could you let me know? We don't have a lot of time. Could you sort of send me a little note telling me where? That's a very useful thing to know.

Mr. Merkley: Yes, for sure.

Mr. Marchese: The government quickly made an announcement on music programs where the Ministry of Culture and the Ministry of Education together are going to offer four million bucks to match the fundraising activities of other people. Obviously this is not going to put one teacher in the classroom. What do you think of that? Quickly, though.

Mr. Merkley: I would like to see our government put money into helping teachers who are already in classrooms, trained music educators.

Mr. Marchese: I agree.

Mr. Merkley: I think bringing artists into the schools is a great addition to what should be already existing.

Mr. Marchese: But you want teachers in the classroom?

Mr. Merkley: Absolutely.

Mr. Marchese: The government claims that they've hired thousands of new teachers, and they presume to say that some of these are music teachers, art teachers. Are you aware of that? Is it happening anywhere that you know?

Mr. Merkley: In TDSB, I believe—I don't have the exact numbers. We could get it for you. There are teachers who were hired from that announcement, but, for example, the York Region Catholic District School Board decided that instead of putting that money into music, it went into phys ed.

The Chair: Thank you, Mr. Marchese. Merciless but just. We now move to the Liberal side.

Ms. Wynne: Kevin, thanks for being here today.

Mr. Merkley: You're welcome.

Ms. Wynne: You referred to section 4—11.1—on page 3. I just wonder if you see an opportunity in terms of some of the standards that boards can be held to, given

ministry priorities. It's the section on provincial interest: "adopt and implement measures specified in the regulation to ensure that the board achieves student outcomes specified in the regulation." Do you see an opportunity? The minister's already said she's interested in consultation on what those standards will be. Do you see an opportunity to insert music and arts into what the ministry would expect the boards to be held to?

Mr. Merkley: I think if those standards were put in place—there are situations where principals do not have the opportunity to be able to have a music specialist in the school, and I think if there was some direction from the ministry, it would encourage principals to make that choice, to make sure that there was music education or arts education within their school.

Ms. Wynne: So you see having those kinds of guidelines in place as a good thing in terms of the expectation in the boards around the province?

Mr. Merkley: Absolutely. I would love to see that.

Ms. Wynne: Great. Thank you.

The Chair: Thank you, Mr. Merkley, for your presentation and presence.

Mr. Klees: On a point of order, Mr. Chair: I would ask that the information that Mr. Marchese requested be directed to the committee as well. I would very much like to have that information.

The Chair: Thank you, Mr. Klees. Your request has been directed to Research Officer Johnston, noted, and will hopefully be complied with.

TORONTO DISTRICT SCHOOL BOARD

The Chair: We now move to our next presenter, Ms. Sheila Ward, chair of the Toronto District School Board. Ms. Ward, please come forward, to be joined by Mr. Bruce Davis. Welcome to you both. I respectfully remind you that you have 12 minutes in total in which to make your presentation and for questions and comments, time beginning now.

Ms. Sheila Ward: Thank you, Mr. Chair. The Toronto District School Board appreciates the opportunity to address the standing committee on social policy concerning Bill 78. It's very nice to see at your table two former trustees who served in Toronto with great distinction: Rosario Marchese and Kathleen Wynne. We're happy to see them here. I believe we're also joined in the audience by Trustee Josh Matlow.

TDSB supports much of the bill. In particular, we appreciate the intent of the bill concerning supports for new teachers, professional activity days, maximum class sizes, minimum teaching time, student trustees, and grants for community use of schools and construction of child care and facilities. The directions set concerning these matters are welcome. Addressing many of these issues through regulation will allow the province to be flexible and responsive to changing circumstances and evolving objectives.

We believe the province has a completely legitimate role to set provincial objectives and to set broad expect-

tations about how school boards use resources. School boards need flexibility, however, to meet these objectives. We need this flexibility because different school boards and different schools within one board face different challenges. Different schools need varying approaches and different measures. School boards should have flexibility to choose and adapt different measures to meet provincial objectives inside a framework of clear accountability for results.

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In contrast, Bill 78 would move Ontario toward greater provincial direction, management and control of school boards. Regulations in the provincial interest would broaden significantly the minister's explicit powers to direct the activities of school boards and broaden the minister's power to suspend the governance of an elected board. A board's possible non-compliance with the regulations would allow the minister to investigate the affairs of the board, which in turn could lead to mandatory orders and supervision of the board.

Bill 78's direction toward greater management and control by the province would carry some important negative consequences:

Detailed regulations would reduce the ability of school boards to adapt their practices and direct their resources to different local needs.

Detailed regulations would erode the responsibility of elected representatives on school boards.

The new regulations could require a board to use resources such as English-as-a-second-language funding or remote and rural grants in specific ways. As a result, the new regulations could significantly reduce the fiscal flexibility of boards to meet changing costs; for example, growing costs for heating fuel and electricity. Without adequate new funding to meet new requirements, this could deepen the conflict between boards and the province concerning adequacy of funding.

There is considerable risk in broadening the power of future governments to control school boards, especially since new regulations can be made without public scrutiny or debate in the Legislature. While the current government has made a clear commitment to improve the public education system, the motives and priorities of future governments cannot be known. Bill 78 could let future governments readily impose different requirements on boards and make it easier to suspend local governance. This could contribute to a destructive politicization of education and could allow rapid and destabilizing shifts in requirements imposed on boards as governments change.

Mr. Bruce Davis: The Toronto District School Board and other school boards are willing to work with the provincial government to meet provincial objectives and to maintain an effective accountability framework for the resources that our local electors have provided through their property taxes. I should remind you that 59% of our funding in Toronto actually comes from local property taxpayers.

School boards are best placed to know specific measures that are required to meet the province's goals in our different communities and different schools. Because we live in our communities, we can know the needs of our students and schools and we can see the results of our programs and services. We are willing to remain accountable for how we use our resources within a provincial accountability framework focused on results.

We would also note that the direction toward greater provincial control over school boards is inconsistent with the government's current proposals to reduce provincial control over the city of Toronto. Today you're discussing how to tighten controls on school boards and later this week you're discussing Bill 53, which actually loosens control on the city of Toronto.

For these reasons, the Toronto District School Board urges that Bill 78's provisions concerning regulations in the provincial interest be removed. Recommendation 1 is listed: Remove section 4 of Bill 78 and the related sections concerning regulations in the provincial interest.

The Toronto District School Board recognizes that the province may not be willing to remove this provision concerning regulations in the provincial interest. If the province continues on this path, Bill 78 should be amended to require a more transparent and accountable process to develop these regulations.

Bill 78 would allow new regulations in the provincial interest to be approved by the Lieutenant Governor in Council, through the cabinet. As a result, new duties could be imposed on school boards without any public scrutiny or debate in the Legislature. New regulations would be more effective if they were developed in partnership with school boards because boards can contribute knowledge about effective and feasible measures. To encourage future governments to work in partnership with boards, Bill 78 should be amended to require public notice of intended changes to regulations concerning the provincial interest and to require opportunities for boards to review the proposed regulations within a time frame that allows for meaningful response.

So our second recommendation is there. If you don't accept our first recommendation, then at least, at minimum, amend Bill 78 to require public notice of intended changes to regulations concerning the provincial interest and to require opportunities for boards to review the proposed regulations within a time frame that allows meaningful response.

If you are unwilling to remove the provisions concerning regulations in the provincial interest, then Bill 78 should be further amended to remove the proposed power for the province to regulate outcomes. This bill would allow the province, through regulation, to regulate outcomes. I don't understand how you can regulate, for example, the outcome of teenagers. I just do not understand how you can do that.

Section 4 of Bill 78 would create a new clause 11.1(2)(b) in the Education Act that would require a school board "to adopt and implement measures specified in the regulation to ensure that the board achieves student

outcomes specified in the regulation.” It may not be possible for boards to achieve a prescribed outcome. Boards can be held accountable for what they do in order to reach an outcome, but often outcomes are affected by other factors or events beyond the control or even the influence of a school board. It would be inappropriate and unreasonable to require compliance with specified outcomes.

So our third recommendation is that if recommendation 1 is not accepted, please amend section 4 of Bill 78 to remove the authority for regulations in the provincial interest to prescribe outcomes.

Ms. Ward: Finally, the Toronto District School Board would recommend that the province use Bill 78 to repeal the current provisions of the act that create personal liability for trustees who vote to contravene an order of the minister made under subsection 230.3(2). TDSB appreciates that Bill 78 would repeal current provisions that make a trustee guilty of an offence, liable for a fine and ineligible for five years to hold office, for which elections are held under the Municipal Elections Act, if the trustee votes to contravene a minister’s order. But our board recommends that Bill 78 also include the repeal of the remaining provision that allows a court to recover funds from a trustee if he or she voted to apply funds in contravention of a minister’s order. We believe that retaining this personal liability is unnecessary. It reflects a punitive approach that is not helpful to build an effective partnership with boards to improve outcomes for students. We ask you therefore to amend that subsection to repeal it.

In summary, the TDSB supports many provisions of Bill 78 and we do support the government’s intent. We urge, however, the removal of proposed new powers to make regulations in the provincial interest because these powers are inconsistent with governance by elected trustees. It would be more effective, in our view, to determine objectives and improve accountability through a respectful partnership among the province and school boards. Our board and other boards are willing to work with the province collaboratively to set objectives to improve our supports for students and to strengthen our accountability to our electorates.

The summary of our recommendations is in the report.

The Chair: Thank you, Ms. Ward and Mr. Davis. We’ll move to the NDP. About a minute each, please.

Mr. Marchese: He’s ruthless, you see, and there’s so much to ask.

I appreciate the presentation. It was quite forceful and forthright. I’m assuming, quickly, that you disagree with Mr. Crothers from the York Region District School Board. Quickly, though.

Ms. Ward: Quickly, probably.

Mr. Marchese: Of course, you do. Yes, you do. I know from your presentation.

You were worried about section 4, and I totally agree with you. All the Liberals heard you. I’m glad that Ms. Wynne is here. One of the problems that bothers me is that if the minister were to specify that ESL money

should go for ESL, I wouldn’t find that a problem because the issue for me is underfunding, not the directive that says it should go to ESL, where it should. What we want to tackle is the underfunding issue, and not leave you with a liability in case you say, “Sorry, you’ve got to provide it yourself. We’ve got no money. You can’t send me to jail or pay for that;” right?

Ms. Ward: That exactly describes the situation today.

The Chair: Thank you, Mr. Marchese. We’ll move to the Liberal side.

Ms. Wynne: Thank you. Hi, Sheila and Bruce. Are you aware that the minister said yesterday that she’s going to bring a motion about adding consultation to the process around the regulations? A lot of your concerns are around the public engagement on that and the discussion.

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I guess the second question is, do you think it would be healthy to have a discussion between boards and the ministry about the guidelines around things other than finances? That’s really what section 4 is about. With the consultation piece added, it’s a dialogue between the ministry and the boards about what we should expect the outcomes for students to be. Do you think that would be a healthy thing, and do you agree with the consultation process?

Ms. Ward: I do, but the difficulty we faced is that the consultation process is fine; there’s nothing, I don’t think, that either this government or the previous government wanted boards to do. The issue has always been that we haven’t had the resources to do it.

Ms. Wynne: But that’s outside the scope of this bill, right?

Ms. Ward: It’s outside the scope, but if you’re going to hold us accountable, then you’re going to require a—

The Chair: Thank you, Ms. Wynne. We’ll now move to our final side, the PC side.

Mr. Klees: I’d like to just carry on that line of questioning. At the top of page 3 you make reference to these regulations that would specify how you use your funds. My understanding is that now, in order to meet requirements, whether it’s salary, whether it’s electricity and other things, you’re actually having to shift money from things like ESL and special needs to these other areas. Is that correct?

Ms. Ward: That’s absolutely correct.

Mr. Klees: And what you’re saying is, if the minister is going to direct by regulation how you use those funds, you’d better come up with some more money so that you can deal with these other areas and fully fund teachers’ contracts and electricity costs and all of these other maintenance areas. Is that right?

Ms. Ward: That’s completely correct.

Mr. Klees: Thank you very much.

Mr. Davis: Could I just mention one thing in following up? We’ve had investigators sent in before. This bill actually gives the government three or four more reasons to send in investigators, and we’re worried, frankly. We don’t know what the next government is going to do or the next government after that.

Mr. Klees: Worry about this government.

Mr. Davis: We're worried about any government. You've given governments more reasons to send in investigators, not just over money but over a lot of other things.

The Chair: Thank you, Ms. Ward and Mr. Davis, for your deputation on behalf of the Toronto District School Board.

TORONTO PARENT NETWORK

The Chair: I now call to the podium our final presenter of the afternoon—oh, not the final presenter of the afternoon—Ms. Cathy Dandy and crew, representing the Toronto Parent Network. Welcome. Cathy, I remind you respectfully that you have approximately 12 minutes in which to make your presentation. As you recover yourselves, I'll then begin your time.

Ms. Cathy Dandy: This is just a permanent state of affairs; there's no recovery.

The Chair: Please begin.

Ms. Dandy: Good afternoon. As you know, my name's Cathy Dandy. These are my two girls. I also have a son who's in grade 11. This is Rebecca Malcomson, in grade 6, and this is Tabitha Malcomson, in grade 3. Tabitha was in utero when I started doing this; Rebecca was two. So they're well versed in this. They're not necessarily intimidated by government, so when they grow up they'll be following in my footsteps.

I'm here to talk about Bill 78. I'm talking about it from the point of view of a parent-activist who talks to a lot of other parents, who's going to speak not to what school boards and trustees and government officials and educators speak about in terms of standards and accountability, but rather what's the lived experience in the classroom.

I was talking to a steering committee member of the Toronto Parent Network and I was saying that really this bill could be entitled, "Polishing the chrome on the bumper while the engine seizes up." The focus of this bill is on a whole bunch of peripheral things. Some of them, yes, are important, but the core stuff in education is not being tackled by this government, and I have grave concerns about that. There are some things in there that are needed: talking about teacher induction, which I will not speak to; trustee salaries; student trustees. All those things are important, but one of the most significant things of concern, and it was mentioned in previous presentations, is the overemphasis on the regulatory nature of this bill. Everything is about setting further standards, about more regulations, about further con-scripting the school boards' ability to function as a locally elected body, and continuing to drive standards down on our students in a way that just simply, quite frankly, punishes them.

Education in the province of Ontario, particularly in the schools that I'm familiar with and the parents I speak to, has become a pretty unpleasant place. It is mostly about performing. I find the name of the bill incredibly

appropriate: student performance bill. It is not about expanding the opportunities of education. It is not about expanding the opportunity for education. It is not about enriching it or making their lives any easier. It is not about providing resources for them. It's about setting regulations around literacy and numeracy targets, with nothing provided for boards to actually achieve those targets. Most of the funding that's gone into education recently has been around pilot projects, which are extremely local and always succeed but do not benefit the majority of students. It's about the JK to 3 class cap. It's done nothing for my daughter and my son, who have borne the brunt of the previous government's punishing tactics. Nothing has been done to give their classes a break.

In the section that's been cited quite repeatedly on page 3, where it talks about adopting and implementing measures for health and safety—the Toronto Parent Network was about to release a health and safety report on Monday. Let me tell you, it's all very well to tell boards that they have standards to meet, but there's no money to meet them. The state of our schools in Toronto is disgusting. I would argue that it's actually opening the government up to legal issues; in fact, I know it's opening up the government to legal issues.

I also just want to talk briefly on what is probably a minor point, but as a parent I find it particularly interesting. It's the section on my page 12 where it talks about the principal dealing with parent or guardian complaints and referring to a supervisory officer. In the end, the person designated to oversee any complaint hearing may dismiss the parent or guardian complaint if they think the request is trivial, frivolous or vexatious. Parents already get short shrift in the system, and we have been calling for an education ombudsperson for some time now. I think that particular section is really worrisome. It doesn't provide anything more to the parent or guardian who is struggling to have an issue dealt with. Given the total lack of administrative support and the really quite poor training some principals receive, as well as the fact that in our board, 65% of our principals are new, I think the likelihood of that solving anything for parents is slim to none. I think that section should be changed completely to include an ombudsperson.

I just want to quickly go on to say what this bill does not deal with and what the major issues are. I just finished reading a report by Dr. Bruce Ferguson from Sick Children's Hospital—I hope you've all read it—on early school leavers. It was written for the Ministry of Education and presented to them a year ago. To the best of my knowledge, nothing much has come from it yet. It's capturing the voices of high school students across Ontario. Over and over again, the students and their parents say that what the system needs is more flexibility, more training, a modified curriculum, smaller classes, smaller schools such as alternative schools and lots of social supports. My daughter Rebecca here has said how the school system is full of rules and no fun, and I think that report pretty well captured that.

This bill does not put in place any regulations or any matching funding to deal with the fact that we don't have enough teachers in the system to drop class sizes for all sorts of kids, not just JK to 3. It doesn't make provisions to ensure teacher-librarians are in schools, which are the foundation of literacy. It doesn't ensure that English-as-a-second-language students are going to be provided for under current research, which is five to seven years. We still don't have the curriculum council. There are no health and safety regulations and funding. If you go on our website, you'll see what our recommendations in our health and safety report were last year, and they'll be in this year's report, requesting funding attached to them. There's no ombudsperson, there's no accountability for principals, a huge issue, and there's no mandatory ongoing training for both principals and teachers regarding parents.

I continue to trek out to places where I provide workshops or training for teachers or principals on parents. It's always an add-in and hardly anyone shows up, but I think it should be mandatory, because the incidents of conflict and difficulty and the absolute refusal to provide basic information to parents on an ongoing basis are rampant. It is an ongoing struggle for parents, yet we are told—I've just been told recently about something I'm supposed to do on my time with my private dollars to support my child's education. But there's no information coming from the system in terms of what they're going to do and how they're going to address the problem. Parents talk to me regularly about this.

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I think there are significant gaps in this bill and I think there is a huge emphasis on regulations with absolutely nothing to indicate how those regulations could possibly be met or the so-called outcomes of students could be met. There's no funding and there's no indication that the things that are really needed to provide for success for students, such as social supports, music and physical education specialists, all the things that every report that's coming out now is saying are necessary for student success—there's none of that in this bill. I'm extremely disappointed in the government's approach. Thank you.

The Chair: Thank you, Ms. Dandy. We have about a minute and a half per side, beginning with the government side.

Ms. Wynne: Thank you, Cathy. Thanks for being here. When I started my parent activism, lo these many years ago in 1984, when I was your age and my kids were your kids' age, one of the things we called on the government for—even before the Harris regime—was some guidelines and some specificity about the expectations on boards because we felt that the government should be clear about the policy directives.

I see in this section 4, which I know you're concerned about, an opportunity. If we add, as the minister has said, a requirement for consultation so that there is a robust discussion between the board and people involved at the board level and the ministry on what the outcomes can possibly be, what the expectations should be, what those

guidelines should be, do you not see that there might be possibility for some of the kinds of requirements that you're looking for, especially on health and safety things? You have done a lot of work on health and safety issues. Would it not be better for there to be clarity about what the expectations are? That's what I think section 4 is getting at; that's what the minister intends.

Ms. Dandy: I think absolutely that clarity around expectations is important, but my concern around this is that this is a discussion between two levels of power, one of those levels, the board, having really virtually no power, so it's an unequal discussion. There's also no provision for parents or any other interested education stakeholders to be involved in that discussion. Quite frankly, I find that most of the time—

The Chair: Thank you, Ms. Wynne.

Ms. Dandy: —it ends up being a very limited discussion.

The Chair: With respect, Ms. Dandy, I will have to offer it to the PC side.

Mr. Klees: Thank you for your presentation. Your report that you refer to, the health and safety report, will it be dealing with the issue that is developing within our schools resulting from the reduced supervision time that teachers will be available for in our classrooms, in the hallways of schools and in schoolyards?

Ms. Dandy: To date, our report has not dealt with that. What we do is gather up the occupational health and safety inspections and look at physical deterioration in schools. We're not talking about capital repair; we're talking about the gross underfunding of caretaking and maintenance and what that does to our buildings, as friable asbestos, vermin, mould, tripping hazards, fire hazards.

But adequate supervision of students, both in the lunchroom and in the playground, is a concern. Using students as office help and leaving them alone there is also a concern. We are considering adding that to the report, but to date it's just been a physical report.

Mr. Klees: You're probably aware that principals across the province are facing this now as a result of the recent contracts that have been negotiated by the Minister of Education. We're going to see the effects in our classrooms and in our schoolyards within a very short time. I would think that you as a parent and your organization would want to look at that—

The Chair: Thank you, Mr. Klees, with respect. Now to Mr. Marchese of the NDP.

Ms. Dandy: I'd just like to say quickly, though, that your government also reduced lunchroom supervisors and all the other supervisory things we had.

The Chair: Thank you, Ms. Dandy. Mr. Marchese.

Mr. Marchese: As you can see, the Chair is ruthless. So I'm going to make some quick statements and if there's time, you can—

Ms. Dandy: I'll push back a little.

Mr. Marchese: I want to say that I agree with your point about training for teachers and principals on the whole issue of how you deal with parents. I really do think that's an important point.

Ms. Dandy: It's critical.

Mr. Marchese: New Democrats have introduced a bill that says we should have ombudsman's oversight over education, which the government has not supported. I know it's not the same as having an ombudsman in the Toronto board, but I'm assuming you'd probably support—

Ms. Dandy: I think there should be a provincial education ombudsperson, absolutely. I think that parents and people outside the system have absolutely no way of really demanding anything of the system, having their rights—

Mr. Marchese: I agree with that. Speaking to section 4, which Kathleen Wynne was just talking about, we don't know what this "provincial interest" is. We don't know what they want to do around special ed. I know they've been trying to cut money in this program, so I don't know what that section means.

Ms. Wynne: That's not even true.

Mr. Marchese: Oh, I wish I had time to talk about how that's—

Ms. Dandy: I think the words "provincial interest" really speak to it. I guess I just don't see any provision for a bigger conversation, for having all the aspects of education addressed, including all the expertise that parents could bring to something like that. They are experts and they do bring a point of view that is not accounted for in this at all.

Mr. Marchese: I refer you to the debate I had with the former Minister of Education in estimates, where I talked about special ed and their desire to cap. So when Ms. Wynne says it's not true, it's on the record. If you want me to give you the estimates—and you, Madam Wynne—I'll be happy to send them to you—

The Chair: Thank you, Mr. Marchese. Thank you as well, Ms. Dandy and your entourage, for your presentation on behalf of the Toronto Parent Network.

I now call to the floor our next scheduled presenter, Mr. Al Pierce, chair of the Hamilton-Wentworth District School Board. Going once. Going twice. Mr. Pierce, you will forever have to hold your peace.

OTTAWA-CARLETON DISTRICT SCHOOL BOARD

The Chair: We'll now move to our next presenter, Ms. Lynn Graham, chair of the board of trustees, and Dr. Lorne Rachlis, director of education, of the Ottawa-Carleton District School Board. Thank you very much. Please come forward. As you've seen the protocol, you have 12 minutes in which to make your combined presentation, beginning now.

Ms. Lynn Graham: Thank you to all of you for hanging in here. I know it's getting late. We've come from Ottawa today and we're going back tonight, so we do appreciate you haven't adjourned till tomorrow.

I'm Lynn Graham and chair of the Ottawa-Carleton public school board. Our director, Lorne Rachlis, is here as well and we're going to share the presentation. I'm not

going to speak from speaking notes, I'm going to speak from the actual text of our presentation, which I assume you all have.

I do want to open, though, by saying that the current government has set a very positive tone for public education in this province, for which we in Ottawa-Carleton are very grateful. There are a number of initiatives in this draft legislation that we certainly support, including the recognition of the role of the student trustees, the increase in trustee remuneration, the new teacher induction program and other sections.

But I too am going to focus on section 4. I would like to turn to three specific sections in our report. If you'd go to page 4, at the top, "Encroachment on the duties of boards," this section represents a transfer of authority from local boards to the province. The subsection seeks to regulate the duties of local boards. Rather than assigning duties to local boards, it enables the government to regulate the actions required of local boards in order to fulfill their duties.

The role of the province is to ensure that students across Ontario have equal access to a quality education. The role of local boards is to meet the needs of our students by establishing programs, services and policies; and to do that effectively, local boards must have clearly defined spheres of jurisdiction to establish priorities and set policies. This subsection serves to further weaken the authority of local boards. Students in Ontario would be better served by a legislative framework that distinguishes between provincial and local responsibility.

The province could further provincial interests in education by defining those interests and requiring boards to develop policies and procedures within those areas the balanced provincial interest, local need and resources availability.

Our recommendation there is that the duties of boards should be a matter of legislation, not regulation, and the section should be amended to remove the assignment of regulatory authority to the government and instead assign responsibility to local boards to develop policies in the areas of "provincial interest" and that areas of provincial interest need to be defined.

The second of the three I want to highlight is right below it, "Use of regulations and the need for consultation." I am very pleased to hear that the minister is going to build in consultation, because that was something that was certainly of concern to us.

I'll just paraphrase some of that, that the bill does assign regulatory authority to the government on a wide range of issues. Regulations are an important mechanism for providing guidelines in support of legislation, especially where we need to have flexibility or regular updating to the guidelines.

Unfortunately, there is an increasing trend on the part of successive provincial governments to address legislative issues by way of regulation because it's faster and easier. Unlike legislation, regulations are not subject to debate or approval in the Legislature, but I do note, as I said, that there is going to be consultation built in. So our recommendation is there under number 3.

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The final one I want to mention is on page 6, and again it's section 4, regulation of outcomes, near the top of page 6. This enables the government to specify required outcomes for student achievement in literacy, numeracy and secondary school graduation rates. This is further supported by clause 11.1(2)(b), which allows the government to establish specific measures required of boards in order to achieve these outcomes. The concept of legislating outcomes as opposed to establishing targets is questionable and undervalues the complexity of factors that contribute to student success. The creation of targets provides an incentive for success, while the establishment of mandatory outcomes redirects attention from student learning to achievement of pre-stated outcomes.

I'll now turn it over to our director of education.

Dr. Lorne Rachlis: Thank you, Lynn. It's hard to be what's standing between you and dinner, so I'll be as brief as I can.

I'm picking up from page 6. Just as a quick comment on the role of student trustees, the Ottawa-Carleton board is privileged to have two student trustees who enthusiastically participate in our board meetings as well as our standing and advisory committee meetings. Our student trustees may speak to any matter before the board, and during debate are entitled to request that their views be recorded in the minutes of a board meeting. We're aware that not all students in the province have the benefit of the same level of support from their school boards, and to that end we support legislative guidelines that encourage consistency and standards for student trustees. However, the Ottawa-Carleton District School Board has formally taken a position that it does not support voting rights nor access to any in camera meetings for student trustees.

We also feel that the legislation as currently structured with respect to recorded votes creates operational problems for local boards. We have specific recommendations about how these concerns might be addressed.

On page 8, with respect to class size, we certainly support the smaller primary class size initiative. However, significant changes to school boundaries, school programs and even grade levels in the school will occur for September 2007. I think that's roughly the time of the next provincial election. It's critical that any regulations recognize the need for local flexibility to avoid extensive disruption which will occur 15 months from now.

At the bottom of page 8, with respect to trustee honoraria, the Ottawa board applauds the changes to the provisions regarding trustee remuneration, including the increase in honorarium, the retroactivity of the honorarium for the current school year and the return of provisions regarding trustee honoraria to regulation rather than legislation. However, we are concerned that the bill provides the authority to pay trustees "an honorarium in an amount determined by the board" and does not include a formula for the calculation. We believe that local boards should have the authority to set the honoraria based on a formula that results from a compensation review similar, for example, to that undertaken for

members of provincial Parliament and municipal councillors. We also feel that consultation on the establishing of trustee honoraria should be done according to local board policy and not prescribed by regulation.

Finally, on page 9, with respect to timing and commitment of provincial grants for school board obligations, we recognize that Bill 78 does impose a number of new obligations on school boards. Our board has previously indicated to this government that education funding is in crisis. Local boards cannot assume new obligations without appropriate increases in funding to cover all new costs. As a result, we're requesting that the government recognize these new obligations imposed in the bill and make a public commitment to provide the necessary funds to pay for those obligations.

On a related note, it's imperative that the government recognize the need for timely announcements and distribution of education grants so that local boards may be engaged in the type of long-term planning that's necessary for us to fulfill our mandate. We're therefore recommending that subsection 27(1) of the bill be amended to establish a date by which all legislated education grant amounts are confirmed to local boards and that the date be at least five months prior to the commencement of the school year, and possibly by March 31.

In closing our presentation, we have provided you with an overview of our concerns with Bill 78. We have a number of other areas that we would like you to read in the paper. We aren't reading it, and we hope that you will. We'll also be happy at this point to address any questions you may have.

The Chair: Thank you, Mr. Rachlis, Ms. Graham. We've got a minute each. To the PC side: Mr. Klees.

Mr. Klees: Thank you for your presentation. The Ministry of Education has placed significant obligations on your board over the last couple of years, not the least of which are four-year contracts and the escalating costs of teachers' contracts. Given all of those obligations, without additional resources, will you be running a deficit at your board?

Ms. Graham: We have projections showing that we may be able to squeak through in 2006-07, but we're going to be in serious trouble in the 2007-08 school year and the problem is going to grow as the years progress because we do not have the funds for that salary gap. We're taking money out of all our other line items, and it's becoming increasingly serious.

Mr. Klees: So you are shifting resources, money, from other programs.

Ms. Graham: Absolutely.

Mr. Klees: Are you shifting anything out of the special-needs programs, for example, into salaries?

Ms. Graham: The area that we're really shifting out of is the local—

The Chair: Thank you, Ms. Graham. Thank you, Mr. Klees. Mr. Marchese, approximately a minute, please.

Mr. Marchese: We have one minute and I have two questions. The first one is that I appreciate your concern

around section 4, which you've heard most people speak about.

Ms. Graham: We've been here, yes.

Mr. Marchese: I share that. While you support the idea of consultation, why might you not consider the idea of saying to the government, "Delete it. Delete this section, because we're worried, and then have consultations"? Once we've done that and we know what you're getting at, maybe we can present another bill.

Ms. Graham: We would like further clarification; you're right. But we have given a specific recommendation on how we would like the consultation to be carried out.

Mr. Marchese: I disagree with that, by the way, but I have no time to disagree with you.

On the whole issue of class sizes, the government is going to create maximum average class sizes—it's talking about class sizes in general—by regulation. It concerns me. Are they going to do it by grade, by division, by school, by board, or by what method? We don't know. Director, are you concerned and do you have a suggestion as to what method—

The Chair: Thank you, Mr. Marchese. I will now offer it to the Liberal side. Ms. Wynne.

Ms. Wynne: I want to thank you both for your specific recommendations. We'll go through them entirely.

On the issue of the consultation, do you see this as an opportunity, then, for us to have this discussion between the ministry and the boards about the kinds of things that boards should be responsible for, are already responsible for, and getting some guidelines in place from the ministry to the boards, and that relationship that will clarify some of the expectations on boards?

Ms. Graham: I think some of the provisions we do see in regulation. Some we don't. But for the ones we do, we just want to be sure that there is meaningful consultation with adequate lead time on it. I think that's our major concern.

The Chair: Thank you, Ms. Wynne, and thanks to you as well, Ms. Graham and Mr. Rachlis, on your deputiation from Ottawa. We wish you a safe journey returning.

COALITION FOR MUSIC EDUCATION IN CANADA

The Chair: We now have our final presenter of the evening, Ms. Ingrid Whyte, executive director of the Coalition for Music Education in Canada. Welcome, Ms. Whyte. As you have seen, the protocol is 12 minutes for the combined presentation, beginning now.

Ms. Ingrid Whyte: Thank you for the opportunity to be here today. We're going to take you page by page through that very long survey that I've left with you all today. I'm not really; it's by way of background.

Beside me is Heather Ioannou, who's one of our board members. My name is Ingrid Whyte, and I'm the executive director for the Coalition for Music Education in Canada.

The Coalition for Music Education in Canada was founded in 1992 and represents thousands of Ontarians and more than 20 music-education-based associations from across Canada. We came together to share ideas and improve the state of music education in Canada. The coalition works with parents and other concerned citizens to increase involvement. We work with governments at various levels to address the need to protect and preserve music in schools.

Members of the coalition represent a wide range of music-education-based associations from almost every province in the country, including the Canadian Music Educators' Association and provincial affiliates in Ontario, British Columbia, Manitoba, Saskatchewan and Nova Scotia, the Canadian Music Industry Education Committee, the Kiwanis Music Festival, Carl Orff Canada, the Kodaly Society, the Ontario Choral Federation and many others. Besides music educators, members of the Coalition for Music Education include industry representatives, parents and music lovers across Canada.

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Our mission is to raise the awareness and understanding of the role that music plays in Canadian culture and to advocate the contribution that music education makes in the lives of all Canadians. It's the goal of the coalition to see that every child has the right and opportunity to receive, through their basic school curriculum, a well-rounded and balanced education that includes a comprehensive, sequential quality program in music.

I got involved in this organization almost three years ago, not as a music educator, but as a parent who has seen first hand the impact that a good music program has on children. I have twin daughters and when they were in grade 4, a music teacher handed them their first instruments: a viola and a trombone. I had two of the shyest, quietest, least confident kids you could imagine at that time. But you know what? Music brought the life out of them and helped create two incredible young women. It gave them focus and drive, it gave them self-confidence, it gave them friendship and community, and music inspired them. But I witnessed many cuts as they worked their way through the public school system, and that is why I'm standing here before you today.

Just one week ago, on May 1, we celebrated Music Monday, an event organized by the Coalition for Music Education in Canada. More than half a million students, teachers and dedicated music advocates across the country joined together to celebrate the power of music. They united in the performance of the same song at exactly the same time across the country as a way to show their love of music in their lives and in their schools. From coast to coast to coast we sent a message that music education is an integral part of a child's education. More than 600 Ontario schools participated in an event that demonstrated the galvanizing power of music and how that power is rooted in schools.

The students who participated in this national celebration were among the lucky ones, however. They have a music program and they have a dedicated music

teacher. Many young students are not so fortunate, as music classes, resources and specialist teachers have faced serious cuts or elimination across the country. Half a million of us participated in Music Monday last week, but there are more than five million children in Canadian schools, and each and every one of them deserves a quality music program in their school.

The Coalition for Music Education advocates for the contribution that music makes in the lives of all Canadians. We believe that music is key in learning and in life, and we need to protect and nurture music in our schools so our young people can enjoy the lifelong benefits music can bring.

Bill 78 must recognize music and the arts right alongside numeracy and literacy as pillars of a good, well-balanced education. As recently as last Friday, Premier McGuinty stated his belief in the value of arts in education with the announcement of \$4-million arts education partnership that will match money raised by arts organizations from private sector donors. The partnership will fund projects that promote and improve arts education in schools and communities. While programs such as these may enrich the arts experience for some children, we must be careful that they do not replace or drain resources from the delivery of quality music education in our schools.

The good news is that our legislators are recognizing the value that arts education provides to our children in their learning environments, but in order for our children to fully receive the benefits of music in our schools, we must ensure that music education is seen and practised as a developmental, sequential, quality program delivered by qualified, certified music educator specialists.

So why are quality music programs so important in the education of our children? Because music develops skills needed by the 21st century workplace, critical thinking, creative problem solving, effective communication, teamwork and more. The world-renowned expert on innovation, education and creativity, Sir Kenneth Robinson, said, "Creative and cultural development is a basic function of education, not a separate subject."

Music keeps students engaged in school and more likely to graduate. Gary Crawford, trustee and vice-chair of the Toronto District School Board, has this to say: "Music can be a powerful vehicle for positively influencing and benefiting at-risk, alienated and marginalized children and youth.... Music can be used as a tool to speak to kids, as well as a way for kids to speak to us."

Music improves the atmosphere for learning, stimulates the imagination and helps kids achieve in other subject areas like math and reading. And there are numerous studies that provide support. A study out of McGill University in 2002 talks about how "Music involves perception, memory, emotion, motor control, all the learning aspects. It brings together a lot of different functions in a very coherent way."

A brand new study just out of the University of British Columbia "points to a number of reasons for why music studies have a positive impact on academic results, including a key one he calls the socio-emotional benefit

of music." The study points out how "music classes often create the social stability teenagers need. The quality of the relationships they develop in these classes [is] much better than the quality of relationships in other classes, and this is really important to high school kids."

Music creates context for history, geography and cultural awareness.

In 1998, Dr. Len Henriksson of UBC's faculty of commerce and business administration wrote, "There is a growing body of research that suggests when arts are developed and included as part of the core curricula, students have more and better chances of achieving their greatest potential."

But perhaps most importantly, in a world that's increasingly troubled, where kids have more challenges and pressures than they deserve to face, where many kids are feeling disengaged and isolated, music creates community. Music reaches across all barriers of class, race, language and ability, and helps us work together, respect one another, experience joy together and succeed together.

As one Ottawa educator wrote to me in an e-mail following our inaugural Music Monday concert in 2005, "One of my choir students told me that when she moved to Canada, she wasn't nervous. She explained that although she did not speak English at the time, she spoke Music, and she knew that it was a language everyone understood."

From a school principal, I received this note: "We have an extremely successful band program at our school which adds consistently to the positive behaviour in our building as well as the positive self-image of our students. For us, music is every bit as important as any academic subject. It is a lifelong gift."

Numeracy and literacy are important, but it's music and the arts that give us our humanity. And if you believe that school is the foundation for everything we want our future to be, then our schools must include music as a tool for engagement, harmony, creativity and achievement.

As I said earlier, we have more than five million children in Canadian classrooms, with more than two million right here in Ontario, and each and every one of them deserves a quality program in music. Ontario can lead the way in its commitment to and delivery of quality music education.

Bill 78 must recognize, overtly and emphatically, the powerful contribution that music education makes in the lives of our children through our schools. In recognizing music and arts education as a pillar to a well-balanced education, you have an opportunity with this bill to set a new standard of educational excellence. With this recognition, certain policy areas within the bill must be re-examined to reflect a genuine commitment to music education: that new testing standards in literacy and numeracy must not undermine existing and future investment in quality music education; that regulations be put in place for music and the arts to ensure implementation of programs at local levels; that class size caps do not marginalize existing music programs by taking away the

classrooms in which they are taught, nor jeopardize future investment in music programs; and finally, that music education must be delivered by certified, qualified specialist music teachers through developmental, sequential programs.

Music education has been recognized by the government as a distinct area of learning. It has its own unique place in Ontario education, as outlined in the Ontario curriculum document, *The Arts*, 1998. We ask legislators to be vigilant and ensure that Bill 78 does not inadvertently rob music and the other arts of their autonomy and rightful place in education.

I'd also like to suggest that we, as the Coalition for Music Education in Canada, can assist you when forming important decisions regarding education in Ontario. Through the coalition, we can offer consultation with some of the greatest collection of music education minds in Canada. We believe in a process of constructive dialogue that can lead to actionable and meaningful outcomes for music and the arts in Ontario classrooms.

In addition to the copies of the deputation I'm leaving with you, I've left behind a benchmark survey that we completed last year that surveys the state of music education across the country.

Thank you for this opportunity to speak with you, and I hope that we can continue to work together to improve the lives of children through quality music programs in our schools.

The Chair: Thank you, Ms. Whyte. We have 30 seconds each. Mr. Marchese.

Mr. Marchese: I didn't think we had time. I just want to agree with everything you said. Given that the Premier spoke so beautifully about music just last Friday—and the member from Stoney Creek and Minister of Education Papatello—and given that they say that they put 4,000 new teachers, and that includes so many that would be music and arts teachers, why don't they just build it

into the bill, is what you're saying, right? I agree with that.

The Chair: Thank you, Mr. Marchese. Ms. Wynne.

Ms. Wynne: I want to thank you for your advocacy, because I know how hard you both work. I would just ask the question that I asked of Kevin earlier in terms of the opportunity to have that dialogue with boards and to actually set some guidelines in place that might do some of what you're asking. Do you see any opportunity in terms of the regulation-making authority in the bill?

Ms. Heather Ioannou: Perhaps I could answer that. Actually, I would like to see that, Ms. Wynne; I don't see it there. If it is there, I'd like it strengthened. We'd very much like that opportunity.

Ms. Wynne: I'd just like you to take—

The Chair: Thank you. We now move to the PC side.

Mr. Klees: Mr. Merkley, whom you are obviously associated with, made a presentation earlier. He indicated that he is now seeing music programs squeezed and cut as a result of some of the government policies. Are you aware as well, are you getting reports of music programs in the province being cut?

Ms. Whyte: Absolutely, yes.

Ms. Ioannou: If I could jump in there again, there are no cuts. I think it's inadvertent. Someone said to us last week that education is an amorphous gel: you push one side and the other side bubbles out. The small class size cap is a laudable venture. However, the result is in—specifically I know in the city of Toronto, with the over-subscribed schools, principals have to look for space—

The Chair: Thank you, Ms. Ioannou. Thank you as well, Mr. Klees. And thank you, Ms. Whyte, for your deputation for the Coalition for Music Education in Canada.

Seeing no further business, this committee is adjourned till Monday, May 15, at 3:30 p.m.

The committee adjourned at 1841.

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Standing committee on social policy

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Amendment Act
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Comité permanent de la politique sociale

Loi de 2006 modifiant des lois
en ce qui concerne l'éducation
(rendement des élèves)



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 15 May 2006

Lundi 15 mai 2006

*The committee met at 1551 in committee room 1.*EDUCATION STATUTE LAW
AMENDMENT ACT
(STUDENT PERFORMANCE), 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'ÉDUCATION
(RENDEMENT DES ÉLÈVES)

Consideration of Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education /
Projet de loi 78, Loi modifiant la Loi sur l'éducation, la Loi de 1996 sur l'Ordre des enseignantes et des enseignants de l'Ontario et certaines autres lois se rapportant à l'éducation.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I call this meeting of the standing committee on social policy to order. As you're aware, we're here for deliberations on Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education.

NATASHA CUDDY

The Chair: I begin by calling our first presenter, Dr. Natasha Cuddy. On behalf of the committee, I'd also like to thank the Cuddy family for graciously agreeing to reschedule their presentations. They were in fact here at an earlier date and agreed to reschedule to allow us to keep our own schedule.

Dr. Cuddy, I'd like to inform you and others that the protocol for individuals is 10 minutes; for groups, 12 minutes. As you've probably seen, any time remaining will be distributed evenly amongst the parties for questions and comments. I invite you to begin now.

Dr. Natasha Cuddy: Before beginning, Deborah Campbell, whose story Martin Thomason read to the committee last Monday, has asked me to read into the record the end of her testimony, which was cut off then:

"Ministry of Education representatives stated they had no jurisdiction to intervene in decisions of school boards. This is very troubling, given the Wynberg decision, which held the failure to ensure school boards were providing appropriate special education programs and services violated the minister's obligation under the

Education Act. Efforts for three years with the board, trustee and ADR also failed.

"We must act in the best interest of our child and now must leave the province, friends, home and family to provide health care and appropriate educational services for Johnathan.

"Although this account is one family, I stand here for hundreds of families currently before the Ontario Human Rights Commission seeking appropriate accommodation and educational services from the government and school boards in Ontario, for thousands of special education students who show no gains in performance in the EQAO report of 2005 in grades 3, 6 and 9, and for the thousands of children languishing on wait lists for programs and services allowing them their right to access education in Ontario.

"Well, I don't really stand here. I want to bring my family home.

"Thank you,

"Deborah Campbell."

I'd like to introduce myself. I'm Dr. Natasha Cuddy. My academic qualifications include a Ph.D. and a CFA. Professionally, I managed billions of dollars of investments over 20 years, both here on Bay Street and in London, England. I am here today as a parent to talk about Bill 78, especially the new section 11.1 to increase school boards' accountability to the Ministry of Education.

Ian Urquhart quoted Minister Kennedy as saying, when he introduced this bill: "As it stands ... 'all we [the government] can do is throw money at a problem.' There is no guarantee the dollars will arrive at their intended destination once they have been filtered through the boards." This bill is designed to give the elected government of Ontario that control and that guarantee.

This is vital, as our experience from 1998 to 2002 in the Toronto board, and home-schooling since, will show this committee. We are convinced that this bill is an essential first step. Some reaction has been along the lines of shock at taking power away from the boards, "the oldest expression of democracy in Ontario," as Murray Campbell wrote. Our personal experience and the research we've had to conduct to get an explanation for that experience show that these boards are out of control: no control on actions, no accountability.

You've already heard from parents: Testimony from Anna Germain and Deborah Campbell, who can't get

special ed services for their children who really need them, despite the fact that boards and the ministry are obliged in law to provide those services and since 1998 have been given specific ISA funds for intensive support for such children.

In the case of our eldest son, the lack of controls and accountability at the board took an opposite form. From 1998 to 2000, the board put us and our son under massive pressure to say he was learning disabled and needed to be in a separate, special class. This has become known in Ontario as diagnosis for dollars, and results directly from the lack of any control or accountability.

In 1999, while our son was in grade 2, the TDSB produced a psychological assessment that said he did not know all the letters of the alphabet and could only read at kindergarten level: two years behind. It designated him as "LD, learning disabled," a concept that was not explained to us then or for years to come. Only later did we discover that "two years behind" was required by the current definition of LD for a significant discrepancy between IQ and academic achievement. In 2001, the US federal government discarded this definition as without scientific basis and as actively harmful to children.

We fought against this assessment at the time. In 1999, we brought the principal of Sylvan Learning Centre to a school team meeting about this psychological report to show Sylvan's testing on our son. They had been teaching him for about a year. Far from being two years behind, Sylvan tested him at grade 3 level in reading: one year ahead. We had great difficulty understanding what the school and the board were doing. We put it down to incompetence and our son's rapid progress in catching up taking them unawares. But we believed that in the middle of grade 3, January 2000, the psychological report about being two years behind and any talk about separate, special classes had been finally dealt with and gotten rid of.

It was only when a new principal arrived at the school in grade 6, September 2002, took a look at the documentation in our son's OSR and actually put him in a separate, special class for LD that we discovered what had been going on through grades 3, 4 and 5. We had been comprehensively misled.

In late 2002, we discovered a mass of secret documentation in the board's psychology file, which showed what had been going on since our son began school. In grade 2, the school and board psychologists, after completing the 1999 two-years-behind psychological report, had secretly tested our son's reading again. She then found our son's reading tested not two years behind but at grade 2 level. But the school psychologist buried the extra test in the secret psychology file, and instead of withdrawing the two-years-behind report, she and the school pressed on with it in the clear knowledge that it was false.

The 1999 psychological report, which we thought had been overturned and consigned to the trash, remained in his Ontario school record and continued to be used without our knowledge. Based on it, the school and board

had continued to treat our son as LD. In grade 4, they tricked us into agreeing to a bit of in-class extra help "to reinforce grade level class work," we were told, for perhaps 20 minutes a day, and then into signing a form for funding for this bit of extra help. Only in late 2002 did we discover that this had been an official area IPRC designation in February 2001, for which the school framed secret reports describing our son as so severely disabled that he could not survive in a classroom without full-time, one-on-one support—documents which by law should have been shown to us at the time, but which we only discovered later in the secret board psychology file. This 1999 two-years-behind report was used again for this. Of course, none of the significance of any of this was explained at the time.

There has never been anything physically or mentally wrong with our son. We have never wanted any special education services for him because we never believed he needed any. The only problem our son ever had was that he entered grade 1 in September 1997 unable to read and left grade 1 in the same condition after a year of extra help from the school. The school had made up its mind that our son was LD and needed special ed. For the next four years they continued to insist on this, despite all evidence to the contrary.

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Our son, therefore, is the other side of the coin to the genuinely disabled children who cannot get adequate special ed programs, which they and their parents know they need. Our son represents the other reality: the majority of children labelled with highly subjective and debatable disabilities, given minimal, if any, special help, but still claimed for massive sums of special ed funding. The first, genuinely disabled, group cannot get into appropriate special ed; the second, subjectively labelled, group cannot get out of special ed, no matter how hard they try. Our son's case shows the lengths of deception, fraudulent reports, hidden tests and secret files which the school and board have been and remain prepared to go to in order to obtain special ed funding.

Why did the school and board go to such lengths? A senior special ed bureaucrat came to the school in October 1999, at the beginning of Grade 3, to try to bully us into a special ed class, even after our son had caught up and Sylvan had tested him a grade ahead. Why did the school board refuse to recognize that our son had caught up, and insist on documenting, in secret, a severely disabled boy who did not exist, while all the while lying to us about what was happening to our son?

When we discovered what had been happening in late 2002, we were shocked. It took months of research to work out why this had happened. Over the last three years, we have shared our son's story and our research with Ministers of Education and Health, Premier McGuinty, the education critics, senior ministry bureaucrats and many parent organizations. This is why we are here today. The boards, and so the schools, of Ontario are not accountable to anybody: not to parents, not to taxpayers, not to the Ministry of Education. If proper controls and

safeguards had been in place, neither school nor board could have done this to our son or to countless thousands of other parents of children diagnosed and mislabelled for funding dollars. This bill is one of several first steps in putting this right, which must go further, and quickly.

ISA and diagnosis for dollars—using children for bounty money and as cash cows—was supposedly abolished in 2004, after Minister Kennedy's press conference with Lynn Ziraldo of the Learning Disabilities Association of Ontario. I was told to my face on several separate occasions, in 2004 and 2005 and 2006, that "We're not doing ISA anymore," by Minister Kennedy, MPP Wynne, Deputy Minister Levin and Director Bruce Drewett, but as we will see, the boards have been very busy this year in rounding up as many children as possible for the last round of ISA, with the full knowledge and blessing of the ministry.

As Dr. Bruce Ferguson was quoted in the *Star* this weekend about the 30% dropout rate: "One third were identified as having special needs, most often attention deficit disorder." Why doesn't it occur to anyone that the fraudulent diagnosis of ADHD, Ritalin drugging and labelling for ISA dollars is the main reason these kids drop out?

Education took a major wrong turn in Ontario with ISA, which has infected the whole education system. I ask you to read the testimony of Julie Berry Cullen before the US presidential commission on special education in 2002, which is attached to the submissions of the next presentation by Dr. Neil Cuddy. If the facts contained in that testimony are accepted, together with the accountability measures of Bill 78, there is finally a chance here in Ontario to put things right for our children.

The Chair: Thank you, Dr. Cuddy. I have to commend you on the exact precision of your timing. That was exactly 10 minutes. Unfortunately, that leaves no time for questions and comments.

NEIL CUDDY

The Chair: I invite your other half, I presume, Dr. Neil Cuddy, to perhaps continue the presentation. Dr. Cuddy, you also have 10 minutes.

Dr. Neil Cuddy: My name is Neil Cuddy. I'm a parent with a strong interest in the passing of this bill, given our experiences in Ontario schools over the past 10 years. I'm also a qualified academic historian, with a first-class Oxford BA and a D.Phil., and many years' experience teaching at Western, York and the University of Toronto. I bring that perspective to analyze the wider issues behind our son's experience with the TDSB since 1997.

Our eldest son entered Grade 1, unable to read, in 1997-98, just as the PC Harris government revolutionized education, changing the funding formula and amalgamating school boards. Suddenly the Ministry of Education was the paymaster as well as the regulator. Boards could no longer raise extra money from property taxes at

their discretion. They could not escape from the funding formula, tied to enrolment and classroom space, except for one door left open: the intensive support amount—ISA—for students with such severe special needs that they needed one-on-one support for most or all of the day. Such students were to be individually claimed for \$12,000 or \$27,000 per year to the board.

ISA was designed with no adequate controls. Boards needed virtually no documentary proof for their claims in 1998. An IEP and a local IPRC would do, if available; if not, never mind. No mechanism was ever designed to get behind the paper claims and check what was actually happening in classrooms.

The TDSB massively overclaimed for one in 35 of its enrolment, double the provincial average of one in 72. This was our son's grade 1 year, when the school failed to teach him to read. They claimed him then for ISA—\$27,000 per year. The newly amalgamated TDSB spotted at once that ISA was an independent way to raise more funds. The extra money from the ISA claim compensated almost exactly for what the TDSB was supposed to save through amalgamation: a total of over \$117 million, which was paid every year after. The TDSB had sidestepped the government's funding formula.

The government spent the next six years trying to control ISA, to shut the door after the horse had bolted. Every year of ISA claims—1999, 2000, 2001-03—was an inquest into what happened in 1998. Existing 1998 claims were required to be resubmitted with massively fuller documentation. This was why the school pressured us so hard in grades 2 and 3 to get exactly this documentation. We couldn't understand: Why insist on a two-years-behind psychological assessment when everyone knew he was at grade level and beyond? ISA was the answer. Our son being two years behind was worth \$27,000 a year to school and board, so that's what the assessment said.

The ministry's paperwork controls failed, however. The 1998 claim was paid in successive years, unless a board could submit a higher claim. Many boards that had not spotted the funding loophole in 1998 caught up in 1999 or 2000. The TDSB, however, sidestepped the inquests. It already had twice the provincial average of claims, so in 2000 it submitted no ISA claim at all. Yet at the school level, the pursuit of paperwork on our son continued in secret. A comprehensive review of all ISA claims started in September 2001, our son's grade 5 year, ending midway through his grade 6. This gave the board a long deadline, so in grades 4 and 5 we were told our son was in regular class and that his reports were at grade level, while IEP, with practically invisible entries saying he was still two years behind in spelling, prepared for a renewed ISA claim which would be required soon.

Our son was finally claimed again under the ISA comprehensive review when a new principal arrived in grade 6 and put our son in a full-time withdrawal LD class. We agreed to a new psychological assessment to rule out any problem with our son. The same school psychologist who did the fraudulent 1999 assessment did

a new one for ISA, completing the secret \$12,000-a-year ISA application form for the ministry deadline. We soon found it in the secret file; otherwise we'd never have known ISA existed, let alone that our son was being claimed for it. By February 2003, school and board refused to explain or amend our son's record, and gave an ultimatum to return him to the school or to home-school. Both our children have been home-schooled since then.

Our son should never have been claimed for ISA. This money was intended for severely disabled children requiring constant one-on-one support. The board had finally sidestepped the ministry's controls in the comprehensive review.

We tried to get explanations and accountability. Our MPP, George Smitherman, wrote to the board in December 2003 three pages outlining the diagnosis for dollars in our son's case. We shared our conclusions with the Ministry of Education. Smitherman's office sent a position paper to Minister Kennedy in February 2004, outlining potential LD profit centres at boards abusing the ISA process for extra funds. The new Liberal government was proclaiming education reform, so some steps were taken.

In July and August 2004, the ministry held a joint press conference with the LDAO about ISA and boards' overidentification of students with severe special needs. A report showed that ISA claims had doubled during the comprehensive review, from \$500 million to \$1 billion, and prevalence went up from one in 71 to one in 36, as the other boards caught up with the TDSB. Almost all the growth had come in the categories of LD and behaviour. ISA was to be abolished and a working table headed by Kathleen Wynne and Sheila Bennett was set up to devise a replacement.

The working table report, sitting on Minister Kennedy's desk since January 4, has just been released, an 18-page essay that took a year to write. Its explicit remit was to fix the doubling in ISA claims, yet its funding proposal sets in stone the current ISA grant—at least twice what it should be, the ministry said in 2004—plus every extra child the boards can find to claim this year—which is exactly what boards have scrambled to do while the working table report sat on the minister's desk—converted into a board-specific per pupil amount for high needs, to be multiplied by enrolment for the future. This proposal to replace ISA did not take a year to devise. It was taken off the shelf. It was actually framed in 2002 by the ministry's ISA working group chaired by Peter Gooch, then of the ministry, now of the TDSB, which had earlier devised the very comprehensive review that caused the doubling of claims in the first place. This was not a replacement for ISA then, nor is it now: It was the boards' second choice for the future state of ISA. Their first choice in 2002 was to continue it exactly as it was.

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There are still no mechanisms in the report to enable the ministry to check what the boards are doing with this money. The records and experiences of students like our son, who was claimed for ISA dollars, will still remain

unfixed. In 1999 and 2001, the Provincial Auditor issued reports on special education that said there was no way of telling how boards spent their supposed special ed. dollars or with what effect. The working table report has nothing to say about that and it has proved itself to be a disgraceful waste of time and money.

So Bill 78 is all the more vital for imposing controls on boards. ISA is an example of what can happen when a government tries to influence what happens in classrooms using only the remote control of financial incentives. Governments, if they want to get elected and re-elected, want direct control of this all-important issue. As Ian Urquhart quoted Minister Kennedy: "As it stands, says Kennedy, 'all we [the government] can do is throw money at a problem.'" There is no guarantee the dollars will arrive at their intended destination once they have been filtered through the boards.

The United States of America invented LD. Like so much else, Ontario adopted it, unlike for example the United Kingdom. In the USA, the perverse incentive of federal IDEA dollars led to an epidemic of LD diagnoses, in pursuit of comparatively tiny federal sums of about US\$1,200 per head. But this was recognized and put right at exactly the time ISA was being devised and exploited in Ontario. The President's Commission on Excellence in Special Education reported in 2002, distinguishing between real disabilities, such as blind and deaf, which are stable in incidence, and school-diagnosed ones like LD, which increase to match the available money. That has happened spectacularly in the USA since 1980. In 2001, national hearings, part of No Child Left Behind, abolished the two-years-behind discrepancy definition of LD. Instead, children were to be taught to read with IDEA funds and without labelling; only long-term lack of response to proper intervention would justify an LD label. The re-enactment of the IDEA in November 2004 put this into legislation.

In 1995, the Ontario royal commission For the Love of Learning had already come to the conclusion of the US federal government six years later: Genuine remedial intervention should be tried for years before the last resort of using a pseudo-medical label like LD because the discrepancy definition could diagnose almost any child as LD, and LD numbers rose magically to meet available funding.

Yet in 1998 to 2004 in Ontario, despite the royal commission only three years before, despite what was so clearly happening at the same time in the US, ISA put a bounty of \$27,000 on each child who could be diagnosed with that now-discredited LD discrepancy definition. The boards could not resist temptation. Nowhere else on earth has the price per pupil's head been set so high. Nowhere else has there been such huge and sudden apparent growth in severe special educational needs.

The ministry assumed the power of paymaster in 1998. Now it must finally assume the responsibility to see how the money is spent. Bill 78 is a step in the right direction. It and the other measures that are needed to ensure full accountability are vital to stop what happened

to us and to our son, and thousands of other children too, from happening again, what the Toronto Sun has already called in print a "Scandal in Special Education" and a "fraud": "It's up to the education minister to quit worrying about the toes he'll step on and end this injustice to some of Ontario's most vulnerable." That certainly applies still to the new minister.

The Chair: Thank you to the doctors Cuddy for your presence, your contribution and your written submissions.

ONTARIO TEACHERS' FEDERATION

The Chair: I will now move to our next presenter, Ms. Marilies Rettig, president of the Ontario Teachers' Federation. Please come forward and with your colleagues please be seated. As you've seen, our protocol for organizations such as yours is that you'll have 12 minutes in which to make your complete presentation. Any time within that remaining will be distributed evenly amongst the various parties for questions and comments. I invite you to begin, and please identify yourselves for the purposes of the permanent record should you have other colleagues speak. Please begin.

Ms. Marilies Rettig: Thank you very much. My name is Marilies Rettig. I'm president of the Ontario Teachers' Federation. I'm here together with my colleagues. To my right is Hilda Watkins, first vice-president and incoming president of the Ontario Teachers' Federation; to my immediate left is Ruth Baumann, secretary treasurer; and to my far right is Lindy Amato, who is director of professional affairs. It is certainly a privilege and a pleasure for me to be here today to present on behalf of the 145,000 teachers the Ontario Teachers' Federation represents, teachers who work in the publicly funded system in the francophone and English school boards, both at the elementary and secondary school level.

Our brief is before you, and in our submission we point out that we are supportive of and applaud some of the changes that are introduced in Bill 78, but we certainly have some concerns that we'd like to express to you, both through the context of our written submission and to you briefly today. They focus on three different areas: the new teacher induction program, including proposed amendments to the performance appraisal process for new teachers; amendments to the Ontario College of Teachers Act; and the increased regulatory authority clauses, which are also alluded to.

With respect to the new teacher induction program, I'd like to first turn to Hilda who will provide an outline of some of our issues and concerns.

Ms. Hilda Watkins: OTF would like to commend the government for its proposed removal of the Ontario teacher qualifying test and the introduction, instead, of the new teacher induction program, NTIP. The NTIP is to include mentoring, orientation and professional development components for new teachers, all of which have been shown to increase teacher retention rates in the early years of professional practice.

OTF believes that the principal's role in deciding on the appropriate elements of the NTIP for individual teachers is one that should be undertaken in discussion with the new teacher and, where appropriate the mentor teacher, and should not unilaterally be determined by the principal. Accordingly, we are recommending that the addition of the phrase "in consultation with the new teacher" be included in this section of the bill.

Ms. Rettig: Our submission then goes on to highlight a number of other concerns, of which I will only briefly reference one, and that is the exclusion of occasional teachers from the new teacher induction program.

Since many of those who are entering the teaching profession, beginning teachers coming out of faculties of education, begin their employment in the part-time occasional capacity, we feel it is imperative that occasional teachers are also incorporated into the new teacher induction program. Without doubt, those beginning teachers, whether working in a full-time or a part-time capacity, on contract or an occasional teacher contract, will be well served, and they certainly need the same kind of supports as do those who are entering the profession on a full-time basis.

Likewise, we have a concern that these teachers may be discriminated against in terms of the hiring process. Indeed, they may be less successful in obtaining permanent teaching positions if they are not incorporated to some extent in the new teacher induction program.

We certainly look forward to the process of consultation on other details regarding the streamlined performance appraisal process. We can then go into further depth on the other issues we raised, both in our submission today and other issues we would like to deal with in more detail.

The next area is that of the amendments to the Ontario College of Teachers Act. Most pointedly, I'd like to begin by referencing the issue of composition of the governing council, and I do so by quoting the 2004 paper entitled *Revitalizing the Ontario College of Teachers*, in which the government stated "that teachers deserve the privilege of self-regulation. Ontario teachers exercise a significant trust in their everyday working lives by making discretionary decisions about the needs and development of our children and young adults. It follows that they should be extended the respect of controlling how their profession operates to serve the public interest."

Indeed, there is a dichotomy in the presentation, in our response that we're providing to you today and in our submission. On the one hand, the federation is very encouraged by the proposal to increase the composition of the governing council from 17 to 23 persons who are members of the college and who are elected by members of the college. However, we believe that all fee-paying members of the Ontario College of Teachers who are in good standing should be eligible to both run for the college council and to vote for the college council. Once elected, clearly it is absolutely essential that the OCT councillors should be directed by conflict of interest

guidelines which assist in identifying conflicts of interest and provide such direction.

The federation believes that providing a majority of teachers on the governing council is a necessary first step. It's absolutely essential in terms of encouraging and engaging a greater sense of confidence among teachers in the profession. Since the inception of the college, we've seen a decline of confidence on the part of teachers in the college of teachers. I think it's indicative of the very poor turnout we've seen over the number of years in elections for representatives to the council of the college of teachers.

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In 1997, 32% of the teachers of this province took part and voted in electing their representatives to the council. That declined in 2000 to 13.9%, and subsequently, by the spring of 2003, it had dropped to 4.4%. Clearly teachers in this province are not engaged, or there is a disconnect between teachers and the council or the college of teachers.

Increasing classroom representation, I believe, is the first step, and OTF does believe it's a first and a positive step. We certainly fundamentally disagree that this small majority of one turns power over to teachers' unions, particularly when it appears that regulations may preclude certain teachers from being eligible to be elected to the council.

Currently, there are 13 elected councillors on the college of teachers, eight of whom are classroom teachers, two of whom are occasional teachers, and three of whom are elected at the local level or are officers who work for their teachers at the local level.

The profession, and indeed the public interest, has been well served by this council. When doing an analysis of the OTF relations and discipline committee, the group that was the predecessor to the inception of the college of teachers, the numbers of cases that were dealt with, the way in which they were dealt with and the decisions that were rendered were very consistent with the statistics as we have seen them applied to the college of teachers over the last number of years. There is no indication whatsoever that involvement in federation activities has in any way curtailed the ability of teachers to act professionally: to make professional decisions that are in the best interests of the profession, short-term, long-term, and indeed in the public interest.

At this time, in other parts of this country, provincial teacher organizations are charged solely with this responsibility. They do so successfully, they do so effectively, and they do so with the public interest at stake. I draw upon experiences both in Saskatchewan and in Alberta, where that structure continues to exist.

The last reference I'll make is to the General Teaching Council for Scotland, where there is an inextricable link between teachers who are leaders of national teachers' organizations and the college of teachers. In every instance, the decisions of the General Teaching Council for Scotland have been in the best interests of the profession, prevented dilution of the profession, ensured that the

regulatory authority was appropriate in terms of the pre-service programs, and served both the profession and the public interest well.

Again, we believe that any member who is in good standing and is a fee-paying member should be eligible to both vote and run for elected office.

The other issue I'd like to briefly highlight before I turn it back to Hilda is the grave concern we have with the reduced term for councillors. We believe that six years is far too short a time frame. The nature of the committees that individuals have to participate on, the nature and substance of the work they have to do, the kinds of decisions they have to render, and the information they need as they grow in those roles speak to the absolute necessity of continuing with the current 10-year term. We encourage this committee to bring that forward.

I turn it back to Hilda to discuss peer review.

Ms. Watkins: I was told to say my name: Hilda Watkins.

While peer review is not contained in the printed version of the bill, we understand that Minister Papatello informed the standing committee that she will bring forward an amendment to the Ontario College of Teachers Act to provide what she characterized as peer review for principals. This idea is not a new one. It has been discussed at the governing council several times before and rejected. The concept is not supported by a majority of the members of the college, or by the governing council of the college. The peers of the Ontario College of Teachers are the qualified teachers of the province and are not limited to those in similar roles.

The minister's stated intention raises questions of whether teachers in other job classifications will claim the right to the same kind of peer review.

We are also concerned that such a provision would leave many decisions of disciplinary panels vulnerable to challenges based on the definition of "peer review." For example, could elementary teachers challenge decisions of panels with only secondary teachers? Could teachers challenge panel decisions based on gender, race or religion of members of the panel?

We join with all others who have previously pointed out the flaws in such a provision in the Ontario College of Teachers Act and strongly advise against such a recommendation.

Marilyn will conclude.

Ms. Rettig: We have—and I will not go over it for very long—provided an overview for you in our brief of some of the concerns we have relative to the increased regulatory that is prescribed by the bill. While there is no definition of what constitutes "provincial interest," the bill provides a wide-ranging authority for the government to take over school boards. We certainly have concerns about that and have articulated that for you within the context of our brief.

Finally, we believe that the college is at a critical turning point in terms of how it will operate in the future. We acknowledge and respect the role of the college of

teachers to act in the public interest. It remains the professional regulator and as such must have the respect of the teachers who are its members. We must ask, will it be given the necessary structure to enable it to be governed democratically by the members of the profession, or will it continue to operate and be viewed by its membership as a largely unresponsive or unrepresentative bureaucracy? Will the government deliver on its promise of creating a truly self-regulatory body for teachers, or will teachers be left feeling, once again, that they have not received the professional respect and the trust that they deserve?

It is OTF's hope that the regulation will be drafted in such a way as to respond positively to these questions, resulting in a truly revitalized Ontario College of Teachers that will serve this profession well and will serve the public interests of the people of this province very well.

The Chair: Thank you, Ms. Rettig, as well as your colleagues here on behalf of the Ontario Teachers' Federation.

WINDSOR-ESSEX CATHOLIC DISTRICT SCHOOL BOARD

The Chair: I now invite our next presenter, Ms. Barbara Holland, trustee of the Windsor-Essex Catholic District School Board. Ms. Holland, if you'll come forward, I'm reminding you that you also will have 12 minutes in which to make your combined presentation, including questions and comments. You may begin now.

Ms. Barbara Holland: Thank you very much. It is a pleasure to be here. It is my first time in this building, and I must say that I need to come back again and bring my family with me.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): If you do that, I'll take you on a tour.

Ms. Holland: Would you? That would be lovely. Thank you. I'll hold you to that. They're outside circling the building because we weren't sure how this would work today.

My name is Barbara Holland. I am a trustee for the Windsor-Essex Catholic District School Board. I am a businesswoman in the city of Windsor. Along with my husband, we have four children who are currently in elementary school, secondary school and university.

My history began as an involved parent at school. I served on our elementary school council and then on our secondary school council. The leap to trustee seemed the natural thing to do. But I must tell you, I certainly had no idea what I was getting myself into.

The letter that we received from Gerard Kennedy in December was probably the first thing I've received in six years that used the word "respect" in the same paragraph as "trustee," and that was most welcome. Therefore, to see Bill 78 come out with the intent, as part of it—because it's such a huge bill—to show respect for the trustee and the role of trustee is also welcome.

I'm only going to address, on behalf of my colleagues at the Windsor-Essex Catholic District School Board, three areas that we are a little bit concerned about. The first area is governance by regulation, the second is personal liability and the third thing is honoraria and the way in which they affect us directly as trustees.

We see ourselves as key decision-makers in our community, and we thank the government for seeing that as well—for seeing trustees as being effective, efficient, and that we are called to represent with ethics while maintaining oversight and accountability. We take our role very seriously.

The part of the regulatory transfer that concerns us is the loss of the voice of the stakeholder. That concentration of authority at the provincial level without what we consider proper checks and balances is a bit disturbing. It is our hope that the government will build into that process a way to hear the voice of the stakeholder and to aid trustees in protecting the public interest in education.

The second issue that I bring to you on behalf of my fellow trustees is personal liability. I thank you for eradicating some of the things put in by the previous government, but there is still one that is of concern to us, and that is subsections 257.31(2) and (3), which still hold trustees jointly and severally responsible if funds are not spent as ordered or authorized. In essence, what that means is that we have to be taken to court, and then we could be ordered to pay those funds back. I understand the need for accountability; I understand the need for oversight. But I must say, I don't know of any other elected official in the province of Ontario who is subject to this. So I would ask that the committee please review that, because this does not speak to respect of the trustee, as Bill 78 wishes to do, but rather of distrust. I like to think of that as an oversight.

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The last thing I'd like to speak about is personal honoraria. Although I am so pleased that the government is looking at personal honoraria and bringing trustee pay scales back up to where they should be—as most of you know, we were reduced to \$5,000 per year several years ago, and we have maintained that level—one of the things that we find disturbing is that there is going to be a base pay and then almost what we call at our board a population pay. So basically, if a trustee resides in a large urban area, that is reflected in that honoraria. The rationale used is that because there are so many more pupils, that relates or transcribes into a greater volume of work. I would say that I disagree with that. The rationale put forth really does not justify the difference proposed. It doesn't take into account the difficulties that rural trustees may have. It doesn't take into account the complexities of negotiations, contract disputes—although I hope we don't have any of those for a very long time—school closures etc. Those things are what they are regardless of the number of pupils you represent.

The last thing, and probably the only thing that justifies what is said in the discussion paper about trustee honoraria based on the number of students, is that it

maintains community engagement. But again, I have difficulty with that, saying that I have so many ratepayers that I must represent and must be engaged with. It's not supported by the Ontario Legislature. Compensation of members of provincial Parliament is based on uniform salary, without differentiation of the constituency represented. For example, the honourable member for Brampton West–Mississauga represents 189,000 citizens according to the 2001 census and is paid \$86,000, the same salary received by the honourable member for Timiskaming–Cochrane, who represents approximately 69,000.

I would suggest to you that perhaps the best way to go when discussing trustee honoraria is to set a base pay someplace between \$15,000 and \$26,000, and do what you do in the Legislature, which is allow for additional salary based on work—additional committee work etc. There is a lot of that at the trustee level. I know I, in one year alone, sat on nine different trustee committees, which saw me working pretty well full-time as a trustee.

The other thing to remember as well: In the discussion paper, Mr. Kennedy said that he saw the role of a trustee as part-time employment. There are times when I would disagree with that, but I would suggest respectfully that if that is the case, then 20 hours of work in Windsor is worth the same as 20 hours of work in Toronto or anywhere in the province of Ontario.

The other troubling feature of the discussion paper, and one which I'm sure was not intended in any way, shape or form, is that by basing our honoraria the way that it looks like it might happen, you will see public school trustees being paid higher than Catholic school trustees and getting paid higher than French school trustees. That taints the whole paper with an air of discrimination, which I'm sure was not the intent.

On behalf of my peers at the Windsor-Essex Catholic District School Board, I ask you to please look at those areas and hear us and the association, which will be coming up later, which represents all trustees province-wide. I want to thank you for this opportunity to have input on this important bill.

The Chair: Thank you, Ms. Holland. We'll have about a minute and a half per side, beginning with the opposition.

Mr. Frank Klees (Oak Ridges): I wanted to ask you a question with regard to the liability issue. What is the impact of that on trustees?

Ms. Holland: The impact would be that we would be second-guessing ourselves all the time. It really implies that we would have to look at what the superintendent of business is bringing forward, and almost audit his or her work to ensure that all of the regulatory issues have been solved. We do that now, but we also do it with a mind to what the people in our community need and see as a need. So now you're going to have trustees sitting back saying, "If I vote on this, am I going to have to pay back a million dollars and sell my house etc. to do so?" So it makes the whole process tentative. I think there are times when we are dealing with so many complex issues that

we need to move quickly and assuredly, based on all of the information that we have in front of us.

Mr. Klees: Would there have been circumstances in Windsor where this might have applied in recent history?

Ms. Holland: Looking back I wonder, in all honesty, if there are places where that could have impacted on us, perhaps not so much in negotiations, because we were assured that that would be covered, but in other areas, and specifically in special education, where we have provided funding and gone above what is offered in that envelope to offer more services to people. Now I would have to sit back and say, "Are we allowed to do that?"

The Chair: Thank you, Ms. Holland.

Mr. Rosario Marchese (Trinity–Spadina): Ms. Holland, we're just going to go around quickly, with a minute and a half. It's fair to say that the Conservative government had that clause that dealt with liability individually and/or jointly liable. You were hoping that, based on the fact that the government talks about respect for trustees and teachers, they might have taken that section out. Is that basically what you were saying?

Ms. Holland: That's correct.

Mr. Marchese: It didn't work, did it?

Ms. Holland: No, it didn't work.

Mr. Marchese: But you're still working on the whole idea of accomplishing the—

Ms. Holland: There's hope. That's correct.

Mr. Marchese: Yes, of course. It's so important to have hope.

There was a clause there that deals with the issue of teacher induction in the bill—not a clause, but there are teacher induction programs. You've read parts of this?

Ms. Holland: I've read the bill. Yes.

Mr. Marchese: Do you think there should be principal induction programs built into the bill?

Ms. Holland: I really can't comment on that. I'm more involved in how our administration is looking at teacher induction, so I couldn't respond appropriately. I'm sorry.

Mr. Marchese: Okay. The teachers' salaries is a complicated one, because in Toronto, for example, they expect you to be full-time even if you're not, and that might be the case in every other board across the province. Would it be fair to say that if the government established a base, that would be good, but allow boards to be able to then add another \$5,000 or \$10,000, depending on their own needs and their own areas?

Ms. Holland: I would think so, yes, because every board operates differently. So I would respect the need to establish a solid base but then get rid of the population item and let us do it based on committee work. This way the trustees who are doing the most work—

The Chair: Ms. Holland, with apologies, I will have to intervene. Thank you, Mr. Marchese.

We'll move it to the government side.

Mr. McMeekin: Ms. Holland, I just want to begin by saying thanks. Just looking at your work schedule and the kind of payment that has been made for—it's not even an honorarium; it's less than half the minimum wage. So we

certainly want to show a lot more respect for trustees than that in some kind of tangible way. How we end up doing that is going to be something that we're going to have to do.

I was particularly interested in your reference to the voice of stakeholders and how that could be guaranteed. In my riding we have an education listing group with 60 parents, students, principals etc. I meet with them four times a year. It helps. How would you see this happening, from a trustee perspective, to guarantee that stakeholder involvement?

Ms. Holland: From a trustee perspective, we have a parent umbrella group at both the secondary and elementary level and we hear those voices. As trustees, some of us communicate electronically with our stakeholders, consistently with the chairs of those councils. So we really see ourselves already as parent representatives. When we are told that regulations will be enhanced or enacted without stakeholder information, we almost feel like we're being locked out of the process, that we're being seen as the enemy rather than the voice of the people.

Mr. McMeekin: By definition.

Ms. Holland: Uh-huh.

Mr. McMeekin: Kathleen Wynne may have something.

The Chair: Just 20 seconds, Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): I just wanted to let you know that I have asked the question of the legal folks about the liability, and I'm assured that if this bill passes, the liability for trustees will be the same as the liability for municipal councillors. Okay? So I have asked that question.

Ms. Holland: Thank you. I appreciate that very much.

The Chair: Thank you to all members of the government and the committee, and to you as well, Ms. Holland, for your deputation.

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TORONTO SCHOOL ADMINISTRATORS' ASSOCIATION

The Chair: I would now invite our next presenters from the Toronto School Administrators' Association: Ms. Helen Evans, chair, and Mr. Karl Sprogis, vice-chair and former principal of schools in the great riding of Etobicoke North. I welcome you and invite you to begin your presentation now.

Ms. Helen Evans: Thank you. We are very delighted to be here this afternoon, ladies and gentlemen. I am Helen Evans. I am chair of the Toronto School Administrators' Association. Beside me is Karl Sprogis, who is vice-chair, and he will be taking over the chair position next year.

We are here representing TSAA, which is a professional association having 1,000 active members—vice-principals and principals—in both the elementary and the secondary panels. We bring a school-based perspective to much of this discussion today, and, typical

of principals, we have left you homework. We have a handout here that we hope you will be able to find even deeper information in. It's our plan to present on two or three issues and hopefully leave lots of time for a conversation.

The two issues I'd like to speak on are from an elementary perspective, the first one having to do with supervision and the second one having to do with school tone and culture.

In data collected from our principals and vice-principals this past year we are indicating the schools are showing that they are not as safe. Over half of our people are saying that schools are not as safe as they were last year, and let me explain why.

With this new collective agreement there are now capped minutes on the amount of supervision that teachers can do in the elementary panel. This year we are at 100 minutes. Next year we have to reach, through our best efforts, 80 minutes per week of supervision. Principals try to make things work. To do so they have cordoned off playgrounds so we have more children playing in smaller areas, with fewer teachers monitoring those children. We also have hallways, lunchrooms and bus areas that have fewer adults watching over them. It's interesting to note that in our student safety assessments they are also talking about seeing fewer teachers in their hallways. In fact, many of them are saying they feel less safe, and they even comment about rowdy behaviour.

In this collective agreement we only have time measured in two ways: one, supervision, and the other, instructional time. Well, let me tell you what gets left out. We often leave out the teachers who go into the hallways just to mix and mingle with children—15 minutes at the beginning of the day, five minutes at lunchtime, and sometimes during our rotary times. Here's where great teachers engage in great conversations. It might be that they say, "Do you know what, Shafiq? That was a great catch you had yesterday in baseball." "Kathleen, did you remember to bring your pencil case to class?" "Karl, would you please go back to your locker and get ready for the afternoon?"

Teachers focus conversation. They also monitor safety. That focused conversation and that focus on education means it follows them into the classroom. This government, and indeed all governments, have really worked hard to ensure student success. Student success means that kids are focused; they're listening in classrooms. When our teachers are in a place where they think, "I'm not on scheduled supervision, therefore I don't have to go out into the hallway," some of that gets lost.

I don't even need to remind you that the extra ears and eyes of teachers to make sure behaviour of students is right and to make sure that the correct people are in those hallways are paramount in all of our eyes.

In my own school, which was a middle school, we had to put extra staffing in in the morning when we discovered that kids were coming to school fighting. We also discovered that the marvellous invention of MSN

networking was causing some of our kids to start some insults on the Outlook sessions they were using, and they were coming ready with their dukes up the next day.

Also in my middle school—it was one of those convoluted schools with lots of little nooks and crannies—I needed extra teachers out there for the footprint of the school to make sure that behaviour was right and correct.

I'd like to go on now to school tone and culture. I've been an educator for 40 years. I've been that way with such great pride and honour in this profession that I have chosen, and to acknowledge concerns around school tone and culture really does grieve me. Over 80% of our principals and vice-principals are now talking to me about a disappointing change in the working relationship with staff. Our collective agreements, in my opinion, define what people won't do as opposed to what they will do. They also make it easier for mediocrity to be the common meeting ground, not something we want to happen, with high expectations for our students. I must hasten to add, though, that the majority of our teachers recognize the need to be vigilant and responsible for monitoring/correcting student behaviour at all times, not just when they are on duty.

We need a clearer definition of the responsibilities of teachers, or these sorts of conversations will happen, as I have heard from my colleagues:

—“If you want to meet with me after school to discuss my reading program, you'll have to pay me time and a half.”

—“Your staff will walk out of the staff meeting when you bring in a guest speaker.”

—“It's not my job to meet with parents in the evening interviews.”

—“You know, there are two kids fighting in the hall, Principal. You'd better go and check about that. I'm not on duty.”

Fortunately, the number of school principals reporting these comments does not represent the majority of teachers' views in the system. However, it does highlight the idea that we need a clearer understanding of teacher responsibilities. I have put those teacher responsibilities in your handout that you have.

I'd like to move, if I could, to ask Karl Sprogis to speak from the secondary perspective.

Mr. Karl Sprogis: Thank you, Helen. I'd like to complement Helen's comments with three issues from a secondary point of view. Those three issues are school supervision; size of caps on classes; and a third issue, which deals with a group of students who are at risk, and you know that term very well, but another group that I'd like to talk about, the students who are risky in our schools.

On the basis of supervision, it's on a regular basis that principals, vice-principals and hall monitors are the ones who are responsible for student supervision in their schools. The supervision duties of teachers are very limited. So with little or no teacher presence in the halls, the cafeterias, the school grounds, this is a situation that creates a concern for my colleagues, principals and vice-

principals across the Toronto District School Board. The safety of students should not depend on the eyes of three or four people.

When schools are unable to cover absenteeism in their schools because teachers are away and not enough occasional teachers come in, it's the principal and the vice-principal who are given this problem of looking after a group of students, not that that's something they should not be doing, but in the meantime, they are also responsible for duties and other activities that need to happen.

Imagine yourselves in your offices here in this legislative building with 30 youngsters in the anteroom outside your office. You need to supervise them, and then at the same time carry out your government responsibilities as well as looking after the interests of your constituents. That's the situation that principals and vice-principals face on a regular basis in our schools. It is not a situation that lends itself to safety in our schools. It is in that circumstance that misbehaviours increase, that intimidation begins to occur and that bullying situations are created in our schools—not a good thing for youngsters.

To remedy this, we need to reinforce the ability of principals, under the Education Act, to provide teacher supervision as they see necessary. It is also supervision that needs to be provided in the hallways, the cafeterias, the campuses and as well in the neighbourhood of the schools that they reside in.

The provision of caps on our classes is also something that concerns secondary school principals. It is because of these caps that youngsters are increasingly unable to get the programs they need, that students moving into a school are unable to get the program they want, and that people who have transferred into a school find themselves having to take what is left over as opposed to what it is they need and want. Because of caps, certain specialized programs in the arts, technology and business, and courses such as the locally developed courses or pathways or workplaces courses, get short shrift and are unable to do the job they are intended to do, and that is to interest the youngsters who attend those schools. So once again, when you find youngsters unable to get the courses they want, supervision problems are compounded.

There's another issue I'd like to look at, and that is at-risk students. The government has done a great deal to try to deal with this most vulnerable group of students in our schools, and they need to be applauded for the proactive initiatives they have put in place to deal with the at-risk student. But there's another group, and that is the risky student: the student who comes to us with very few credits, who has come to us because of misbehaviours in other schools and needs to find a different school, and a student whom it is hard to find programming for. These risky students not only make dealing with the at-risk students very difficult, but also put other students at risk. Here again, supervision problems occur, and it makes it very difficult to organize a school for the safety and the success of the students in that school when we have those problems.

Bill 78 presents all of us with an opportunity to improve the education of our students. We are heartened to be participants in a process that honours time—time to reflect, time to listen—to seek suggestions on improvements to this bill. We respectfully suggest that a number of changes need to be made to the bill in order to ensure that the government's priorities for improving student achievement, encouraging students to remain in a learning environment, ensuring a safe learning community and providing ongoing professional development for our educators can be achieved.

Thank you for listening to us.

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The Chair: Thank you, Ms. Evans and Mr. Sprogis. We have about 20 seconds each. We'll move to Mr. Marchese of the NDP.

Mr. Marchese: We've seen the loss of many people who were the eyes and ears. We saw that loss through the Conservative government and we still see it under the Liberals: fewer vice-principals, fewer caretakers, fewer guidance teachers, fewer secretaries and so on. You didn't talk about that.

Mr. Sprogis: Those are all people who need to be in the school, but the responsibility of looking after students lies in the hands of principals and vice-principals. They're the ones who need to give direction to all those other eyes, and that is the teachers in the classrooms, and that could help us tremendously.

The Chair: To the government side, Ms. Wynne.

Ms. Wynne: I just want to clarify that a lot of what you're talking about either flows out of or is part of collective agreements, and just to be sure you're aware that the Provincial Stability Commission is having a conversation about many of those supervision issues. Are you aware of that?

Ms. Evans: We are heartened to see that it has started up. What you will see in our proposal is a definition around the defining of entry time, transition time and general supervision care.

Ms. Wynne: Those specifics, yes.

The Chair: Thank you, Ms. Wynne. Mr. Klees, 20 seconds, please.

Mr. Klees: Is there now, by regulation or legislation, an absolute requirement that principals have the overall supervision responsibility in a school?

Mr. Sprogis: It is there in the Education Act, but unfortunately, it is eroded by parts of the collective agreement and understandings that exist among teacher unions and teachers. We need to reinforce what principals are able to do in terms of assigning supervision.

The Chair: Thank you, Helen and Karl. Thank you for the homework. You both did very well.

ONTARIO STUDENT TRUSTEES' ASSOCIATION

The Chair: I'll now call upon our next presenter, Sarah Chown, past president of the Ontario Student Trustees' Association. Ms. Chown, as you've seen the

protocol, there are 12 minutes in which to make your presentation. Your time begins now.

Ms. Sarah Chown: "The foundation of every society is in the education of its youth."

The proposal before this committee today reflects this quote; the proposed changes are focused on increasing student success and providing youth with a strong foundation to ensure bright futures. Bill 78 proposes a number of changes that would improve our education system and benefit students.

My name is Sarah Chown, and I am honoured to be here today from the Ontario Student Trustees' Association to offer a student perspective on the proposed legislation. The president, Nathan Lachowsky, regrets that he is unable to present to you today.

Student trustees currently play a very important role in the education system, a role they have developed and expanded since they were created. The dedication and commitment shown by student trustees over the past several years has allowed the minister to consider changes to the position that are before you today. We believe that student representation is a vital component of our education system and that students will thrive when provided opportunities to become involved in their education.

In accordance with this belief, I will focus my presentation on the improvements to the position of student trustee at the end of my presentation. It will be addressing each of the three objectives the minister has outlined: improved student performance, partnership in education, and openness to the public.

Replacing the pen-and-paper tests for teachers with hands-on experience will make a real difference in the classroom. The new teacher induction program gives teachers a chance to receive feedback on their approach to the classroom from experienced teachers and students as well as others in a school setting. The program will ensure that teachers develop strong delivery skills and are able to teach effective and informative lessons and increase opportunity for teacher success. It is important that the assessment that remains is carried out by many of the partners in our system and is designed to allow teachers to further develop and improve their skills.

Supporting first-year teachers through a mentoring program and other supports will help to retain new teachers. Mentoring provides an additional resource and accessible experience that encourages and motivates success and confidence.

Increased opportunities for professional activity will ensure that all teachers are developing, and provide opportunities for them to learn from each other and demonstrate a commitment to lifelong learning. Increased professional activity should be mandatory, address a wide variety of issues, and be monitored to ensure it is having a positive impact on teachers in the classroom.

Clarifying the role of the ministry and boards will increase accountability and reaffirm that the education system is focused on ensuring students are successful. Outcomes must acknowledge that success is not determined solely by academic performance. With enhanced

authority comes great responsibility, and this initiative will allow greater adaptability within the system as a whole. The education community cannot cope with changes accompanied by each new minister and each new government. Therefore, it is important to acknowledge that some degree of consistency is required for students to remain in the forefront of the education system.

Extending collective agreements minimizes the frequency of potential disputes and demonstrates respect for the needs of both students and teachers.

Reducing class size has been an important priority for this government. It is encouraging to see work towards creating the best environment for students and teachers alike—small classes. A hard cap is a bold step; however, it does not take into account the unique circumstances that each school community faces. For instance, in schools with low enrolment, such as rural schools, a hard cap is difficult to implement and often results in a more challenging learning environment, such as several split-grade classes, than a slightly larger class. Students in split-grade classes are confronted with a number of social and development issues. Also, boards may be faced with larger expenditures to accommodate these teacher requirements. The regulations must address classes from kindergarten to grade 12 as small class sizes are beneficial at all levels, not solely in the primary division.

Education is a very important part of early child development, and child care spaces in school will ensure that education is the focus of early child care. Child care spaces in schools will create school communities that will support children as they develop and mature, as well as help foster student success and lifelong learning.

E-learning is a great tool to reach all types of learners and those who struggle in a traditional classroom setting. This is an exciting initiative with great potential that must be further developed and explored.

Increasing participation in the Ontario College of Teachers by teachers is a great step to ensure that the college is a strong professional body that garners widespread public respect. Improving the structure of the college demonstrates a commitment to teachers and ensures that they are considered a contributing partner in education.

Increasing trustee remuneration acknowledges the commitment made by trustees to improving public education and provides incentive for the community to become involved in the education process. It is important that trustees come from diverse backgrounds so that they have a strong understanding of the impact their decisions have and can consider situations from numerous perspectives. By encouraging people to run for the position of trustee, increased remuneration means greater competition for the trustee position and results in trustees who take their job seriously and are passionate about improving education.

Public reporting will increase accountability for school boards and help generate public interest in the education system. Reporting is an effective way for boards to

communicate with the public and remain accountable, yet it must not consume excessive time and resources or divert energy from helping students succeed.

Community use of schools invites the public into the education system and increases the presence of a school in the community. Opening school doors to community organizations encourages student involvement in the community and proves that schools are more than just bricks and mortar. Provisions must be made to accommodate schools that struggle to compete with newer and more accessible school facilities.

In November 2005, OSTA-AÉCO's press release "Student Trustees Are Ready for Change" drew attention to the Student Trustee: Today and Tomorrow report. This report contained eight recommendations to enhance the position of student trustee and improve the quality of student representation. These recommendations address the responsibilities, integration, resources and election and term of student trustees. They included democratic election, participation in portions of in camera meetings, the power to make motions and vote, equal access to board resources and trustee training, a cap of three student trustees per board and a student advisory group. Many of these recommendations are included in the proposed legislation.

We believe that these changes will improve student representation, engage students in their education and ensure that students are at the centre of the education system. However, we feel that it is important for students in primary and junior divisions to have a voice. Student trustees should represent all students. These students deserve an equal voice with their older counterparts.

Democratic election of student trustees is important to legitimize the position, increase awareness of the position and engage students in their education. The ministry should provide boards with options for models of election, set a campaign spending limit of no more than \$100, ensure that trustees are elected no later than March 31 and that the contact information for all students is provided to both the ministry and OSTA-AÉCO.

1700

Student trustees should receive a scholarship of \$5,000 upon successfully completing their term in order to remunerate them for the work in a similar fashion as adult trustees. This scholarship would be paid directly to the post-secondary institution chosen by the student trustee. For those who choose to pursue options other than post-secondary education, they shall receive an honorarium in the amount of \$2,500.

Student trustees of 2005-06 have demonstrated dedication and commitment to student representation. They have diligently promoted the Student Trustee: Today and Tomorrow report and responded to questions arising from the report from the media, district school boards and stakeholders. A retroactive application of this scholarship would recognize the tireless contributions of these education partners.

The transition and professional development that student trustees receive is a significant factor in the

success of student representation. Therefore, we encourage incoming student trustees to attend open sessions and meetings of the board and participate in OSTA-AÉCO professional development. We encourage incumbent student trustees to act as mentors to incoming student trustees and we suggest that boards provide resources and information on the current standing of the board to incoming student trustees.

Finally, population-based decisions are not an appropriate way to ensure high-quality student representation. Population-based decisions will not only distort the provincial voice of OSTA-AÉCO, but it will limit boards' capacity to create flexible and successful student trustee policies.

The minister spoke of more relevance, including future voting privileges, for student trustees, which clearly acknowledges that the proposed changes will significantly enhance student trustees' ability to represent the students. The changes will help create civic-minded youth and give all students a role in shaping their education. This also serves as an inspiration for future student trustees to continue the work of those before them and to bring student representation to new heights.

The Chair: Thank you, Ms. Chown. We have about a minute each, and we'll begin with the Liberal side.

Mr. McMeekin: Sarah, thanks very much for your presentation. Very well done. You're very positive about the bill. Is there anything you don't like?

Ms. Chown: It would be great to see more of the recommendations that we made put into the bill, just because we really feel that by giving student trustees a vote and the power to make motions, it will significantly enhance it and ensure that boards are giving student trustees the respect they deserve.

Mr. McMeekin: When I was at university, I sat in the student senate and, I felt, made quite a contribution. You obviously agree with that.

Ms. Chown: That's perhaps the most important thing. The one recommendation that we made was that student advisory groups be given to each board so each student trustee would have a group of other students from which they could draw opinions, and that isn't part of this bill. That would be the number one recommendation not included that we would like to see included.

The Chair: We'll move to the PC side.

Mr. Klees: Thank you, Sarah. Excellent presentation. I appreciate your submission. A proposal was made by the York Region District School Board that student trustees should not be subjected—I think that was the way they positioned it—to certain meetings where, for example, personnel matters are discussed, with the view that it may be placing too much onus or responsibility on students.

Ms. Chown: We actually addressed that in the Student Trustee: Today and Tomorrow report. We feel that there are certain circumstances in which it would be inappropriate for student trustees to be involved. However, we feel that a lot of decisions happen in in camera meetings, and it would just improve the quality of

student representation if we were able to attend and participate.

Mr. Marchese: A statement and two quick questions. One, your suggestion of a scholarship or honoraria of \$2,500 if students don't go on with post-secondary, is a very useful one because it recognizes that student trustees put in a great deal of time. If we don't do that, we don't acknowledge it the way we should.

The other two points that I wanted to make were: Another student trustee talked about the fact that a lot of students simply don't know what you do and who you are. That suggests that the board, through the province, should provide some extra money and/or a mechanism to publicize what you do. You talked about how "Outcomes must acknowledge that success is not determined solely by academic performance." I'm not sure this is what they're recommending.

Ms. Chown: We feel that if there was a democratic election process, that would definitely increase awareness of the position, as well as if there was a student advisory group, because both of those things would require some participation from students and the board.

The Chair: Thank you, Mr. Marchese. Thank you to you as well, Ms. Chown, for your deputation on behalf of the Ontario Student Trustees' Association.

LEARNING DISABILITIES ASSOCIATION OF ONTARIO

The Chair: I now invite our next presenter, Peter Chaban, who is the vice-chair of the Learning Disabilities Association of Ontario. Please be seated, sir. As you've seen, the protocol is that you have 12 minutes in which to make your combined presentation, beginning now.

Mr. Peter Chaban: That's a tough act to follow.

The Learning Disabilities Association of Ontario, which is a provincial organization advocating on behalf of and providing support to individuals with learning disabilities in Ontario, is pleased to comment on various aspects of Bill 78 and its potential impact on students with learning disabilities.

The LDAO was originally founded in 1963 to assist parents of children with learning disabilities to obtain access to special education services and supports. In the more than 40 years since its formation, the LDAO has expanded its activities and services to also include youth and adults with learning disabilities in both post-secondary and employment sectors. As part of our mandate, the LDAO has always responded to the government on legislation that affects individuals who have learning disabilities.

As has been the association's past practice, the recommendations that we are putting forward for consideration in this submission focus on the most positive and productive ways of helping vulnerable students, including but not limited to students with learning disabilities. Let me begin to address the amendments to the Education Act.

Part I of Bill 78 makes a series of amendments to the Education Act. LDAO's comments are focused on these

amendments in the bill: The bill recommends that a new section be added to the act, section 11.1, authorizing the Lieutenant Governor in Council to make regulations “prescribing, respecting and governing the duties of boards, so as to further and promote the provincial interest in education.” While the term “provincial interest” has not been formally defined, the LDAO assumes that in this context it means a series of factors, including, and we have three here: (1) the achievement of the stated goals for student learning such as the stated goals for student literacy levels and graduation rates; (2) compliance with all relevant legislation governing school board activities, including the Ontario Human Rights Code, the Education Act and its related regulations; and (3) a greater accountability—and I underline this—for both the allocation of funding and the standards of student achievement.

In subsection 11.1(2), there are a series of topics which may be included in new regulation. It is the LDAO’s recommendation and expectation that the issues raised in 11.1(2)(b), related to student outcomes, and in 11.1(3), related to elementary literacy and numeracy and secondary graduation rates, include all students. While there is no explicit suggestion that exceptional students or students receiving special education services are not included under these categories, we believe that the inclusive—and again, I underline this—nature of these requirements should be stated. For example, in many cases students in special education programs are automatically excluded from activities that focus on enhanced outcomes, such as EQAO testing.

Next, in clause 11.2(2)(d), there are references to the possibility of introducing a new regulation which would specify measures with respect to the provision of special education services. We recommend that if such a regulation is introduced, it be linked to full compliance with the current special-education-related regulations, including regulations 181/98, 306 and 298.

We also hope that if there is a new regulation related to special education programming and services, it will include and mandate the implementation of some of the recent excellent work carried out by groups such as the working table on special education reform, the Expert Panel on Literacy and Numeracy Instruction for Students with Special Education Needs and the earlier exceptionality-specific standards working groups.

1710

Another key component of a new special-education-related regulation would be improved access to services for students whose identification depends on the provision of assessment services by health care professionals, including psychologists. This is particularly important for students with learning disabilities, whose exceptionality is often poorly recognized within the education system, since they have no access to appropriate psychological assessments. In addition, finding patterns of specific strengths and weaknesses through psychological assessments informs decision-making around the development of individual education plans

and maximizes the likelihood of increased student success.

Bill 78 also introduces changes to section 170 of the act related to class size. LDAO recommends that any new regulation related to class size also cover class size for self-contained classes for students with special needs, mandating compliance with section 31 of regulation 298.

Next, part X.0.1 of the act covers issues related to the induction of new teachers. LDAO recommends that new teachers in the profession should not be assigned to teach classes of exceptional students or even classes where there are a number of students with special needs unless they have appropriate qualifications to do so.

Furthermore, training programs for new teachers, as well as professional development programs for experienced teachers, should include specific training in teaching students with special education needs. This also means that the evaluation of both new and experienced teachers by the school principal should cover a review of the teachers’ capacity to implement the IEP for any student with any exceptionality who is placed in the teacher’s classroom. This requirement should be included in the amendments related to section 277 of the act, contained in the bill.

Finally, there are two key issues that we wish to raise regarding the matter of introducing new regulations.

First, the Education Act already contains numerous references to the authorization of the Lieutenant Governor to introduce regulations. However, in many cases there are no regulations. For example, in the past, LDAO requested the introduction of specific regulations to govern the work of the special education tribunal. This has not happened.

Second, there are several regulations which relate to special education programming and services. In spite of the fact that these regulations have been in place for many years, school boards are frequently not held accountable for compliance with the processes and policies included in these regulations and the implementation of their contents. Examples of these include section 31 of regulation 298, which governs class size for self-contained special education classes. In spite of the specific numbers in this section, many school boards either do not offer such self-contained classes for their exceptional students or, if they do, they do not comply with the specified class size.

Similarly, regulation 181/98 specifies the school boards’ obligation to establish identification placement review committees in accordance with section 11 of the Education Act and the right of parents to have access to the IPRC to determine the identification and/or special education placement of their child with special needs. In spite of this, there are boards which do not have the IPRC process in place even in response to written parental request.

Our purpose in commenting on these factors is that there is limited benefit in suggesting that there will be additional regulations if they are not introduced or, when in existence, they are not utilized for the best interests of

students. We strongly urge the Ministry of Education to address these concerns about the introduction of new regulations and compliance with both existing and new regulations. Thank you.

The Chair: Thank you very much, Mr. Chaban. We have about a minute and a half for each side, beginning with the PC side.

Mr. Klees: Just a practical question for you in terms of the funding implication for special needs: We've seen many times the shift taking place from what is designated for special needs to a school board, and those funds then being used for other programming areas. Could you comment in terms of your experience over the last couple of years? Is that an issue you've come to understand?

Mr. Chaban: The LDAO has always felt strongly about having special education funding kept within a protective envelope, and we've also felt very strongly about the fact that there's a need to have some kind of accountability and make sure that that funding is directed towards its appropriate destiny.

Mr. Klees: Can you give us some advice in terms of how that accountability could be implemented?

Mr. Chaban: Our feeling is that the Ministry of Education should have a stronger stick to carry, shall we say, in order to get boards to be compliant with the demands and regulations the ministry does put forward.

Mr. Klees: If you had one word of advice for the new Minister of Education relating to special needs, what would that be?

Mr. Chaban: To continue on the route that you're already on.

Mr. Marchese: Thank you, Mr. Chaban. I really appreciate the conditions you're trying to instill or impose on what the government intends to do with the idea of regulations re provincial interest around special education and outcomes. It isn't clear what the provincial interest is. I am wary of what that provincial interest is, because I think it's about cutting special education dollars. While it is true that some parents are worried about the fact that some of their kids are misidentified in a way that hurts them, as we had with Ms. Cuddy and Mr. Cuddy, there are other parents who are saying that we need to make sure that we've got services to identify students who are having difficulties, for whatever reason. At the moment, we have cases where an IPRC process doesn't take place but their kids have difficulties.

So you're saying you're worried about what the special interest might be, and you'd like to specify what it is they're trying to dictate by way of this regulation around special ed. Is that correct?

Mr. Chaban: We see that one of the functions of the IPRC is to give voice to parents, and that's why we would like to see IPRCs consistent throughout the province. There are boards that practise IPRCs and there are boards that don't practise IPRCs.

Mr. Marchese: I agree.

Mr. Chaban: If you start to take the power away from the parents, then there's no opportunity for advocacy for their students within a school system.

The Chair: We'll move to the government side.

Ms. Wynne: Thank you, Peter. Nice to see you. Thanks for coming today. I just wanted to clarify: So you're encouraged by section 4, the 11.1, where there will be an ongoing discussion between the ministry and boards about what some of the standards are around special education that boards will be held to.

Mr. Chaban: Yes.

Ms. Wynne: On some of your other recommendations, some of them point to a future conversation between the ministry and the boards. I'm assuming that you, as part of MAC—the minister's Advisory Council—the learning disabilities association will be taking those comments to MAC and informing regulations as they're written down the road?

Mr. Chaban: Yes, we will.

Ms. Wynne: Okay. Thank you very much.

The Chair: Thank you, Mr. Chaban, for your deputiation on behalf of the Learning Disabilities Association of Ontario.

Mr. Chaban: Thanks for the opportunity.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Chair: We now move to our next presenter, Mr. Rick Johnson, president of the Ontario Public School Boards' Association, and colleague. I invite you to begin your presentation—a total of 12 minutes, as you've seen, Mr. Johnson.

Mr. Rick Johnson: Good afternoon. My name is Rick Johnson. I am the president of the Ontario Public School Boards' Association. I am pleased to have this opportunity to discuss Bill 78, the student performance bill, with you today.

OPSBA represents public district school boards and public school authorities across Ontario, which together serve two thirds of the student population in Ontario's publicly funded schools. The combined budgets of our member boards make up two thirds of the province's total expenditures on education.

We have consulted with our member boards regarding this proposed legislation. School board response to the bill is varied. OPSBA will focus today on issues that will do what the bill is supposed to do—improve student performance.

You have our document before you. In anticipation of today's deadline for proposed amendments to Bill 78, it was submitted to the committee clerk last week to ensure it is included in the clerk's summary of submissions. In my brief comments I would like to highlight some of the key points.

I can't emphasize sufficiently the importance of an open and collaborative partnership between the government and school boards. In the two years that I have been president of OPSBA, I have experienced the benefits of this first-hand. This government has demonstrated its willingness to listen to OPSBA and its member school boards when moving on new initiatives. This doesn't mean that we have always agreed, but we have always been able to discuss issues openly and respectfully and

with the shared purpose of improving the quality of education in the province.

I want to say up front that OPSBA appreciates this kind of constructive dialogue and the collaborative relationship that has flowed from it. We hope that the proposals in Bill 78 not only strengthen this relationship but will be framed in a way that solidifies this model of collaboration between school boards and the provincial government now and in the future. Why? Because working co-operatively and respectfully is in the best interests of students and the education environment we can provide for them. It also demonstrates to students a positive model for problem-solving and innovative sharing of ideas that will serve them well when they enter the world of work. Minister Papatello spoke to this very issue when she addressed you last week.

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It is the basis of our recommendation that Bill 78 be amended to include a formalized commitment to consultation with school boards whenever regulations arising from the proposed section 11.1 of the Education Act are considered or amended.

By now, you will have heard from some of our member boards regarding the delicate balance between duties and authorities of school boards compared with those of the provincial government. I am referring, of course, to the new regulatory powers set out in the bill. We speak to this issue at length in our document.

The Minister of Education has always had the authority to make regulations that require boards to fulfill a range of obligations. A clear example is the annual grant regulations. These usually include requirements in the area of board finances that boards are obliged to meet. OPSBA supports much of Bill 78's movement of issues from legislation to regulation. It makes sense to put matters such as class size, student trustees, trustee honoraria, and teacher working conditions into regulation. These are issues that will benefit from the adaptability afforded by regulations.

When we look at the proposed regulations surrounding duties of school boards, we must point out that some of our member boards are not comfortable with these proposals. School boards have always agreed that their main obligation is to the students in their system. OPSBA supports a direction that demonstrates that the province undertakes to balance the commitment to student outcomes with the commitment to financial accountability. While there is some discomfort over how these issues of provincial interest are connected to the powers of investigation, our association is committed to working collaboratively with the provincial government to create regulations that will result in direct improvements for the students in Ontario's classrooms.

With respect to the powers of investigation that I just mentioned, OPSBA has asked the Minister of Education to clarify why there are ongoing provisions for investigation without an appeal process. This omission of an avenue of recourse is not found in legislation governing comparable bodies such as municipalities and hospital

boards. Further, we are recommending a formalized process that provides steps for school boards to work with the minister prior to the initiation of a public investigation.

OPSBA appreciates the Bill 78 proposals to repeal some of the Education Act's more punitive clauses, such as the \$5,000 fine and the disqualification from holding public office. We also welcome the changes in Bill 78 that clarify that an investigation can only be initiated by the minister.

On the subject of accountability, OPSBA believes that the focus that Bill 78 places on student performance reflects the key priorities of school boards. School boards, first and foremost, are accountable for student success. Our resources and best efforts are directed to ensuring effective results.

We appreciate the positive measures the minister has taken over the past two years to ensure progress towards student achievement targets. School boards have worked with the ministry's literacy and numeracy turnaround teams and report favourably on their impact on both student success and staff capacity-building. As these aspects of the regulations are implemented, OPSBA looks to the minister to ensure that the accountability of school boards for student achievement is matched with the ministry accountability to put in place the resources required by boards to reach the achievement targets.

We are heartened by the fact that Ontario is taking a proactive supportive approach, rejecting the policies in place in some US jurisdictions which have only served to undermine the public school system and ultimately fail many struggling students. OPSBA sees the shared provincial-school board accountability as the foundation on which implementation of this aspect of the regulations is measured.

Much of the discussion surrounding Bill 78 has focused on the proposals related to regulated outcomes. OPSBA suggests that a more appropriate yet equally potent and measurable mechanism would be to set targets, not outcomes. We have recommended that the sections of the bill that speak to outcomes be amended in order to speak to "targeted outcomes." We believe that a target is a goal, and that school boards completely support setting goals to improve student performance.

On the subject of student trustees, we support the majority of the initiatives in Bill 78. In fact, most of our member boards are already doing what many of the proposals in the bill call for. Our only point of disagreement relates to the participation in private meetings. The primary concern we have is that students not be subjected to the potential for lobbying or pressuring that accompanies the kinds of issues usually restricted to private session debate. Elected school board members can give numerous examples of undue pressure from the media, the public, employee groups, other trustees etc. when sensitive issues are under consideration. Our student trustees are still our students, and as school boards, we have a duty of care. Creating a process that places students in a situation where they can be targeted or pressured is not a responsible reflection of the duty of

care, so OPSBA recommends that Bill 78 be amended to exclude student trustees from all private meetings of the board.

Bill 78 does other things that relate to student success beyond those I have highlighted for you. With respect to the teacher induction program, OPSBA participated in the minister's working table on teacher development, where the initiatives in Bill 78 were discussed and developed. We continue to be in full support of the new teacher development proposals.

With respect to the proposals affecting the Ontario College of Teachers' governance, we made recommendations on this matter to the government over a year ago, and made the following observations: We believe that the structure of the Ontario College of Teachers should ensure the protection of the public trust; we believe that elected union representatives should not be eligible to hold a seat on the governing council; and we ask for an ongoing role for school boards as employers. We believe that the initiatives put forward in Bill 78 fulfill the spirit of our earlier recommendations.

Our only additional concern relates to a mechanism for fair peer review for all college members, including principals and supervisory officers. Every school trustee will tell you that our principals epitomize what we value in a caring leader. They work with students and staff to build school spirit and education excellence, and they work with parents and communities to make their schools a welcoming place. We need to make sure that the mechanisms that review their contribution are respectful of the role. We were pleased to hear Minister Papatello indicate that she will be introducing amendments to achieve this goal.

The last area I want to comment on is the proposal affecting trustee honoraria. On behalf of all Ontario public school trustees, I wish to publicly thank the government for seeing this as a matter of respect and for addressing it. I want to be clear, however, that the current honorarium—small and token as it is—has not prevented Ontario's public school board trustees from pouring their energies, commitment and expertise into improving the quality of education our students receive. It is OPSBA's desire, as the provincial organization representing public school boards, to continue the dialogue with this government and with all future governments to ensure that Ontario's students experience a level of education success that the province and country can be proud of.

It has been a pleasure to share our thinking with you today. I thank you for your time.

The Chair: Thank you, Mr. Johnson. We have about a minute per side, beginning with the NDP.

Mr. Marchese: Quickly, you didn't comment on the whole matter of the creation of the special interest committee, which is going to have three to five people to supervise the college of teachers. Do you have one?

Mr. Johnson: We're hopeful that whatever is set up for this will still have the public's concern involved in this. Any college that represents a professional body is made up primarily of members of that body. Hopefully,

when this public body is instituted, when we see the details of what it will look like, it'll still fulfill that.

Mr. Marchese: Are you a member of any political party, by any chance?

Mr. Johnson: Am I? Provincially, no.

Mr. Marchese: Federally?

Mr. Johnson: Federally, yes.

Mr. Marchese: Which one?

Mr. Johnson: The Liberal Party.

The Chair: To the governing side.

Mr. McMeekin: Thank you, sir, for your presentation. I was intrigued with your reference to targets versus outcomes. I think we've heard a lot from several of the presenters over a couple of days, that what gets measured gets done and that often something that's declared as a goal doesn't get done because it doesn't get measured; there's no accountability. We know from some past experiences that sometimes people shoot an arrow and whatever they hit they call the target. We're anxious to see real outcomes here, and I'm just wondering if that may be watering it down and providing excuses for a school board not to take outcome stuff seriously.

Mr. Johnson: I don't think so because how I view a target is if the government, for example, has set a target—raise the graduation rate—that X amount of people will achieve, if the target is going to be 85%, it gives you something to shoot for. I look at a target as something solid and tangible, whereas an outcome is, "We hope for it."

Mr. McMeekin: Okay, so—

The Chair: Thank you, Mr. McMeekin. Mr. Klees.

Mr. Klees: I don't know if you were here for the earlier presentation, but we heard some very strong language condemning school boards for how they treat the assessment of special-needs students. What was welcome was the fact that a lot of this authority would be taken away from school boards and transferred to the Ministry of Education. What's your sense of this transfer of responsibility and directing more specifically, for example, special-needs funding? Is that something that you support?

Mr. Johnson: It's one thing to have the process in place that we want special-needs students to achieve, and targeted funding that goes to addressing specific needs. I think we found that during the last process of ISA funding, where funding was able to be directed towards students with special needs that were identified. Part of the accountability measure that I believe will come out of the regulations will ensure that happens. And if—

The Chair: Thank you, Mr. Johnson, for your deputiation on behalf of the Ontario Public School Boards' Association.

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ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

The Chair: I now invite our next presenter, Mr. Bernard Murray, who is the president of the Ontario

Catholic School Trustees' Association, and colleagues. Mr. Murray, as you've seen, you have 12 minutes for your full presentation. I would once again invite your colleagues to identify themselves should they also be contributing to today's discussion. Please begin.

Mr. Bernard Murray: Good afternoon. I am Bernard Murray, president of the Ontario Catholic School Trustees' Association. I have the pleasure to have with me this afternoon Carol Devine, who is the director of legislative and political affairs, and John Stunt, our executive director. We appreciate the opportunity to address the standing committee regarding Bill 78. Our written brief, which you have received, addresses those initiatives of particular interest to OCSTA. Because time is short, we will highlight some of the key portions of our submission.

Bill 78 would amend section 8 of the Education Act to enhance the minister's power to collect personal information. The amendment is intended to support the proposed new regulatory powers given to cabinet and the Minister of Education. The effect of this amendment is to give school boards an exemption from compliance with the Municipal Freedom of Information and Protection of Privacy Act when they are responding to information requests of the minister.

The difficulty with the proposed provisions is that they may simply be too broad. While OCSTA does not have particular difficulty with the accumulation of statistical or generic information that does not identify individuals directly, we must point out that school boards maintain a great deal of personal information. Every employee of the board has a personnel file, the contents of which range from the simply generic, such as the employee's qualifications, to the deeply personal. OCSTA does not see any particular reason why the Ministry of Education would need to have access to the personnel files of individual employees. If there are extraordinary circumstances in which such information is required, then already-existing legislation contains sufficient power to access such information through the appropriate procedures. We believe that it should not be accessible through the mechanisms established under section 8 of the Education Act. OCSTA recommends that section 8 be further amended so that subsections (2.1) and (2.2) do not apply to the individual personnel records of current or former employees of the educational and training institutions.

Bill 78 would amend section 11 of the act to provide the ministry with regulation-making power over instructional days and professional activity days. We support the proposed amendment. We point out, however, that collective agreements may have language in them that is inconsistent with a new regulation. In order to avoid difficulties respecting collective agreements, we recommend that a further amendment be made to clause 11(7)(a) to permit the regulation to directly address collective agreement compliance and to avoid grievances relating to differences between a collective agreement and the regulation.

The balance of power between Queen's Park, particularly the office of the Minister of Education, and school boards is always delicate. Bill 78 represents a substantial thrust towards centralization of power. Like the chair of the Toronto Catholic District School Board, who addressed the committee last week, we believe that the government has proposed these changes with the best of intentions and that the current minister would exercise her authority with caution. However, any law, once enacted, is subject to abuse.

The technical briefing provided to school boards by the Ministry of Education notes that section 11.1 would permit regulations to clarify ministry and board responsibilities related to those goals set out in the section. We certainly favour clarity. We point out, however, that a number of the powers proposed in section 11.1 already exist elsewhere in the Education Act. The passage of section 11.1 and regulations under it would trigger significant and confusing overlap with these existing provisions.

On balance, we could support section 11.1 if it were amended to include an explicit obligation for significant consultation between the ministry and school boards as regulations are drafted. From a policy perspective, such consultation is critical, since the Ministry of Education needs the information and co-operation of school boards to have effective regulations. This government has recognized the importance of such consultation in other legislation, such as in section 35 of the Commitment to the Future of Medicare Act, 2004. OCSTA therefore recommends that Bill 78 be amended to add section 11.2 requiring consultation. Our brief suggests the appropriate language for such a section.

Section 55 of the amended Bill 78 represents a careful effort on the part of the ministry to respond to the aspirations of student trustees to influence school board votes without giving them a legal vote. OCSTA supports the provisions in section 55, subject to our concerns about the attendance of student trustees at private meetings.

Proposed subsection 55(5) provides that, "A student trustee is not entitled to be present at a meeting that is closed to the public under clause 207(2)(b)," that is, a meeting in which the subject matter involves the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian. Subsection 55(5) would permit student trustees to be present at private meetings where the subject matter includes the other matters listed in subsection 207(2), including the security of the property of the board, the acquisition or disposal of a school site, decisions in respect of negotiations with employees of the board, or litigation affecting the board. OCSTA believes that it would be inappropriate for student trustees to be present for board meetings where any of the matters listed in subsection 207(2) are addressed or to receive related agenda material. These matters do not address directly the kinds of educational issues that are of

particular concern to students and about which they should be consulted. The business end of the board responsibility truly belongs to the adult trustees, who are elected by the ratepayers and can be held accountable by them. Student trustees lack the experience and accountability important for participation in discussion of these matters.

Concerns about confidentiality, which presumably motivated the limited exclusion from private meetings in proposed subsection 55(5), are as critical in these areas as they are in respect of the matters listed in paragraph (b). Negotiations with employees of the board are often highly charged. Teachers, who constitute the largest employee group at any school board, undoubtedly have considerable influence on students. Putting students in the position to possibly be approached by employees to take certain positions in bargaining or to release confidential information about bargaining positions and strategy is both unfair to the students and unwise. OCSTA recommends that subsection 55(5) be amended to provide that a student trustee not be entitled to be present at a meeting that is closed to the public under subsection 207(2).

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OCSTA is pleased with the positive attitude shown in the ministry document entitled *Respect for Ontario School Trustees*. We appreciate and support the provision for an increase in trustee honoraria. We agree that there is a basis for consideration of different maximum levels of honoraria that vary according to the complexity of the board. We do not agree, however, that complexity of the board, and therefore trustee workload, co-relate directly to student enrolment. Regardless of student enrolment, the trustees of coterminous or predominantly coterminous boards serve the same community and deal with similar and equally complex issues such as those related to social-economic challenges or immigration patterns. OCSTA recommends that the maximum honoraria of coterminous or predominantly coterminous boards be the same. We also recommend that the base for trustee honoraria be increased from \$5,900 to \$10,000, and that the size of complexity factors be adjusted to maintain the proposed \$26,000 maximum.

OCSTA does not support the provisions in subsection 191(4) for regulations requiring a board to engage in public consultation before adopting or amending a policy providing for the payment of honoraria. Trustees are democratically elected officials and are accountable to their electorate for the way in which they exercise their powers, including the power to set honoraria. Trustees already dedicate, as the ministry document notes, considerable amounts of time to their responsibilities. Requiring yet another layer of consultation would be unnecessary and unwelcome bureaucracy. OCSTA recommends that paragraphs (b) to (d) of proposed subsection 191(4) be deleted.

OCSTA welcomes the reduction of penalties for trustees proposed in the amendments. We support the amendment to section 230.12 to remove the possibility of

a fine or conviction for an offence. We point out the need for a concurrent amendment to subsection 230.12(5) and section 257.45 of the Education Act.

Bill 78 proposes to amend section 230 of the Education Act so that it would empower the minister to direct an investigation of a board's affairs if the minister has concerns that an act or omission of a school board contravenes a regulation made under sections 11.1 or 170.1—

The Chair: Mr. Murray, I'm going to have to intervene and thank you on behalf of the Ontario Catholic School Trustees' Association for your deputation, written presentation and submission.

LILA MAE WATSON

The Chair: I now invite our next presenter, Ms. Lila Mae Watson, who's coming forth in her capacity as a private individual. Ms. Watson, I remind you that you have 10 minutes to make your presentation. Please be seated. Your 10 minutes begins now.

Ms. Lila Mae Watson: Thank you. I often speak ad lib, but being aware of the time constraints, I'm going to confine myself to a script.

Good evening, Mr. Chair and members of the committee. I want to thank you for allowing me to speak regarding Bill 78, the Education Statute Law Amendment Act, 2006, specifically part II, the amendments to the Ontario College of Teachers Act, 1996.

I'm presenting my remarks as an individual who has a genuine interest in the teaching profession and its regulation by the Ontario College of Teachers. I believe that I have a profound and broad understanding of education. My working experience has been in business and as a teacher, vice-principal, principal, a centrally assigned principal in charge of special education and a superintendent in the senior administration. I've also served on and been the chair of boards as well as panels for hearings and tribunals. Most recently, I was a member of the council of the Ontario College of Teachers and continue my involvement with the college as a roster member on panels for accreditation of the faculties of education in Ontario universities. I have two daughters who work in education, one in the public system and one in university. I have four grandsons in the Ontario educational system, ranging from grade 1 to university. I offer this personal background to put my comments regarding Bill 78 into context. I believe that I have a multi-faceted, macro perspective of education.

There are two areas of Bill 78 on which I will comment. The first is the change in the size and composition of the council of the Ontario College of Teachers and the second is the public interest committee.

The number of members of the council is being increased from 31 to 37. This is a very large number to augur well for effective meetings. Thirty-seven members, with a significant imbalance between the elected and appointed members, is too large and has the potential to be dysfunctional. If the 23 elected members continue the

practice of caucusing prior to the council meetings, the 14 appointed members will be at a distinct disadvantage to exercise their responsibilities in the interest of the public. If the elected members take a united position, the appointed members will lose the vote every time on every item.

I know that there have been presentations before you already to delineate concerns about the possibility of the federation's retaining control of the elected positions on council. I will not reiterate these concerns but simply state that I concur. The average classroom teacher is not political. He or she does not possess the political expertise required to function in the political realm of the college. If it was the intent to somewhat depoliticize the college, then the proposed changes to Bill 78 will not do it. I would suggest that the council membership be reviewed, taking into consideration the optimum size for an effective body. Since it appears to be the intent to continue to have appointed members on council to represent public interest, then the composition and balance needs to be reviewed as well.

The second area of Bill 78 that I feel warrants reconsideration is the establishment of a public interest committee for non-members of the Ontario College of Teachers. Its duty is to act in an advisory capacity to the council in the public interest and to perform such other duties as may be prescribed by the regulations. There are many questions regarding this body, its composition, its duties and its relationship with the Ministry of Education. The regulations need to outline the mandate and function of the public interest committee and its interaction with the ministry. Since there are already 14 appointed members on the college council, how will the function of this body differ from them and their role? Who defines the public interest? I would suggest that the perception of the current members of council who are appointed, vis-à-vis their roles and duties and those of the public interest committee, need to be addressed. Has their role been diminished on council? Has it been superseded? How will the criteria for the selection of the public interest committee members differ from those for the appointed members?

Bill 78 is silent on the interaction of this committee and the ministry. Will it report directly to the ministry on matters of the college and the council? Will it have veto powers over decisions taken by council? Will they have the authority of the minister to intervene in matters? There is the potential of creating a two-tier system of decision-making and/or accountability in the public interest. Furthermore, will the committee attend council meetings? Will it be an item on the agenda? Recently, the chair of council became a full-time position. Is the legislation consistent with this change? At what point is there too much overlay of monitoring and supervision, especially as it relates to the ability of the college to exercise its regular duties?

Bill 78 states that the public interest committee is to advise council regarding the duties of the college and the council members. Does this imply that the currently appointed council members do not understand and/or

execute their duties as required? Will there be duplication and/or redundancy in the two public positions? I believe that the criteria for the selection and responsibilities of the members appointed by the government to both the college council and the public interest committee need to be clearly defined and transparent. If there is the possibility of superimposing one layer of public interest accountability on another, then I question the need for the creation of a public interest committee and would suggest that the complement on the college council be revised to ensure that the interest of the public is maintained as required.

Finally, I would contend that the selection of all appointed members, but particularly those of the public interest committee, is crucial to the future of education in this province. The regulation of the teaching profession and the education of students for the future is paramount. Members of this committee need to be people with a macro, wise and well-informed perspective on education and the related matters, not only provincially but globally. They need to execute their duties in the interest of the public, but always with a view to its ramifications on the students and the future. The very best minds, wisdom and knowledge are required of these public members. The criteria for membership must extend beyond partisanship and parochial parameters. I cannot state this forthrightly enough.

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Jane Goodall, the renowned conservationist, recently stated, "Young people are crucial—if they lose hope, that's the end."

We are increasingly becoming aware that if there are to be solutions found in time to reverse the rapidly deteriorating environment and the subsequent annihilation of humans, it will be through the education, scientific research and technology of the young people in the next few years.

I recently sat among researchers and educators who categorically stated that unless we educate young people in science and technology to find answers to the global environmental crises, mankind will not exist in 50 years. This is not an overly emotional or melodramatic reaction, but a fact which is validated.

I contend that the decisions taken regarding education at all levels are more critical now than at any other time in history for the students, the educators and the public. I urge that the amendments to the Education Act and the Ontario College of Teachers Act, 1996, be made with this in mind.

I have posed a number of rhetorical questions which I hope will be considered in the future deliberations regarding Bill 78. I thank you for the opportunity to deliver my comments to the standing committee.

The Chair: Thank you, Ms. Watson. We have about 20 seconds each. Mr. Klees.

Mr. Klees: Thank you for your very thoughtful and informed presentation. What is it that the government is attempting to fix by making the changes that they're proposing to the Ontario College of Teachers?

Ms. Watson: Having been a member of the council at the time these changes were first discussed and proposed, I would suggest that there has been a view that the college council, especially in the elected positions, was primarily filled by those who were in positions within the federations.

The Chair: I will have to intervene there. Mr. Bisson.

Mr. Gilles Bisson (Timmins–James Bay): That was my question.

The Chair: Please continue to answer it, then, Ms. Watson.

Ms. Watson: Having been around at the time when the college was first formed and first discussed in the 1970s, I know that to be true. It was the intent that the federations—I still call them “federations”—would ensure that the teachers would have, so to speak, control through their representatives of the federations. Having said that, I also understand that there has been a concern that the public interest has not been represented at the table.

The Chair: Thank you, Ms. Watson and Mr. Bisson.

To the governing side: Mr. McMeekin, 20 seconds please.

Mr. McMeekin: You make the point about not favouring a public interest commission. You recognize, of course, that there's an oath to be sworn and union officials specifically are not allowed to run for office.

Can I ask you, how did you come to be a member at the college? You were appointed?

Ms. Watson: I was appointed.

Mr. McMeekin: By whom?

Ms. Watson: I was appointed by the previous government.

Mr. McMeekin: In what year?

Ms. Watson: In 2003.

Mr. McMeekin: And you've always exercised your duties in the public's interest?

Ms. Watson: Definitely. I am an educator that has public interest at heart—

The Chair: Thank you, Ms. Watson, for your presence and deputation.

BARB FISHER

The Chair: I now invite our next presenter, Ms. Barb Fisher, who also comes to us in her capacity as a private individual. Ms. Fisher, if you are here, please come forward. As you've seen the protocol, you also have 10 minutes in which to make your presentation, which begins now.

Ms. Barb Fisher: Hello, everybody. It was a little bit of a task finding my way here, as I had a little assistance. I can think of a thousand other places I'd rather be right now.

Interjection.

Ms. Fisher: Well, I'm going to do my very best. People, some very good friends, spoke to me and knew I was coming here. They said, “Why would they listen to you?”

I guess it's because I'm not cynical, and I do believe the system does work.

I'm presenting just as a concerned mom, although I wear some other hats. I recognize the honourable intent in which this bill was drafted and the excellence in the wordsmithing in the drafting of this bill, so I am not going to try at all to amend it, rephrase it or anything like that. What I'm going to do is present some concerns and some of the rationale behind that. If anybody has Coles Notes for the Education Act, it would have been valuable.

The concerns were many, but I'm going to stick to three: the increased accountability, concerns around e-learning and, most importantly, regulations regarding provincial interest.

Increased accountability is diverting funds that should be directed to the students. If you take a look at the bill and start counting, there are teacher induction reporting, class size regulation reports, teaching time reports, compliance on finance, student outcomes, parent involvement, special-ed services, and health and safety procedures. Accountability is good, but you must prioritize. It requires double-staffing: It's the board staff having to create the reports and the ministry having to process those reports. It becomes significantly difficult for small Catholic boards, and there's a concern when the numbers of students are dropping and we see growing administration.

Moving on to the second concern, which would be section 171 around e-learning: It is nice that we've come up to date with the times and recognize this as a valuable tool, but the ministry would be wise to avoid setting minimum standards. This tool should be used only in moderation, as determined by local boards. Extreme use of this tool undermines the intent of public education, especially Catholic public education. The decay of our social fabric is alarming to us, so evident in the 18-year-olds who were most recently involved in a police shooting. It is of paramount importance that students are taught in classrooms, where social behaviours and morals are modelled and expected. It's extremely important for Catholics to have the opportunity to get together and celebrate masses, paraliturgies, retreats, sacramental preparation and many other community-involved activities. It's part of our Catholic community.

Now I come to the most important and the most distressing section of this bill. As a mother, in making good decisions, I would go to the experts and do that kind of thing. Then I would do consultation, and I thank you for the fact that you are doing that right now. I thank you for the opportunity to address this. But when I make a decision as a mother, I would make a decision looking at the best-case scenario and I would look at the worst-case scenario. So I'm going to do exactly that for you.

Let's look at the best-case scenario. The ministry has unlimited funds directed to improved education focus and numerous initiatives, and supports them; they are consultative partners in all aspects of education. Boards are efficient, trying to support all ministry initiatives and squeaking out maybe a few of their own. Resources are

directed to all needs. They're consultative and supportive, and they're filling out the reports. Schools support ministry, board, teacher, parent, student, parish and community initiatives in splendid co-operation. Did I mention that the school boards are filling out reports and the ministry is processing, but now we have super-secretaries and the school is supporting them? The teachers, after playing social worker, behaviourist, therapist, nurse, manager and caregiver, get to educate based on all the above initiatives and meet all the humanly possible Catholic expectations. Yes, they even have, although it's not in the contract, the time to love, the time to listen and the time to follow the students' interests. Yes, a heart attack is just a work hazard. Parents who are overtaxed—pun included—by today's hurry-up society find time to participate in school council, fundraising, school events and to support their children's education. The boards are still filling out reports and the ministry is still processing them. Students? Well, they just try their hardest.

There are two possible outcomes. One, there's euphoria in the streets when we meet those outcomes, but who exactly is going to shoulder the responsibility should we not meet those outcomes?

The second scenario, the worst-case scenario, is a lot briefer. Economic times become challenging, and the sole provincial interest in education becomes economically based downsizing and streamlining. This has that create-a-catastrophe feeling.

1800

Without quality education as the vision and the tool, we are effectively bringing about the potential demise of Catholic public education; in fact, all public education. Should we not meet those outcomes, people will see that they've lost faith in public education.

To have centralized authority to the Lieutenant Governor in Council to make regulations so as to further promote provincial interest in education, in this light, could reverse all the progress that's been made in education. It puts our most vulnerable citizens at risk: our children.

While the ministry suggests goals and standards, the process to meet them should be decided at the local level. The ministry, by controlling funds and setting up standards for performance outcomes that could potentially be unattainable, could destroy public confidence.

Bill 78, regarding provincial interest in education, does not pass the best-case and worst-case scenarios. It is too risky to the education of today and the society of tomorrow.

The Chair: Thank you very much, Ms. Fisher, for your presentation. We have about a minute each. We'll begin with the NDP.

Mr. Bisson: No, that's fine.

The Chair: Thank you, Mr. Bisson. We'll divide the time remaining, beginning with Mr. Leal.

Mr. Jeff Leal (Peterborough): Thank you, Ms. Fisher, for the presentation.

I was just interested in (ii), where you're talking about e-learning perhaps undermining the Catholicity in that

part of our family that we fund publicly in Ontario. Could you expand upon that?

Ms. Fisher: I guess my concern is that we potentially could have kids in isolation taking courses and not involved in a community activity where they're interacting. That's an important part of society, and if we take that away—especially in our Catholic society, where we're trying to build churches and pull people together, praising the Lord. We have specific activities that those children should be involved in, and if they are not in the presence of a school, there's potential loss of that.

Mr. Leal: Have you witnessed this over a period of time, this kind of pulling apart, as you say?

Ms. Fisher: I guess what I'm concerned about is taking a look at—as I say, my reference was just even those young persons, the 18-year-olds who had shot that police officer. It is paramount at this time that Catholicity thrives and grows and teaches children to honour God and act with love.

The Chair: Thank you, Mr. Leal. We'll move to the PC side.

Mr. John O'Toole (Durham): Thank you very much for your presentation—

Interjection: No, no. Don't go.

The Chair: Ms. Fisher, you're still on the podium.

Ms. Fisher: I'm sorry. Forgive me.

Mr. O'Toole: I was taking that as a backhanded comment, but we're used to that when it comes to the education file.

First of all, thank you for your presentation. I was a separate school trustee for a few terms at one point in time. I was there for the government's—not this government's—full funding of Catholic education. It happened under the Mike Harris government; not Bill Davis; Mike Harris, actually, so you should know that. They're equal now. They weren't before, ever, not even since Bill Davis.

When you talk about the Catholicity, there's a big raging debate about the United Nations and the right of all religious-based schools to have the same access to that, for the same passionate reasons that you espouse. Don't you think, in the sense of fairness and equity—I was a Catholic trustee—that they have the right to practise their faith? I'm not leading you; I'm just trying to—

Ms. Fisher: I already have a personal opinion on that.

Mr. O'Toole: Good.

Ms. Fisher: We're talking about student-focused funding, and we're looking at tomorrow's leaders. If we want as a society to have the best-educated kids possible, then all of them should be provided that X amount of dollars for their education.

Mr. O'Toole: Regardless of faith, right? That's a very honest answer, and I appreciate that.

The problem is—right now, the Peel separate board is leading the fight—that the funding gap on the salary grid is \$7,000 per teacher by the way they're funded. That's the issue. It's about \$2 billion. Would you be impressed if this government says, "Do this but there's no money"?

That's what they're doing here. Every board in Ontario is in a deficit. Every single board is in deficit—

The Chair: Thank you, Mr. O'Toole. Thank you as well to you, Ms. Fisher, for your presence and deputation.

ONTARIO ASSOCIATION OF DEANS OF EDUCATION

The Chair: I would invite now our next presenter, Ms. Pat Rogers, the chair of the Ontario Association of Deans of Education.

Interjections.

The Chair: Order, please.

Ms. Rogers, as you can see, you have entered into the fray. I would invite you to begin your deputation on behalf of the Ontario Association of Deans of Education, beginning now.

Dr. Pat Rogers: Thank you very much. I'm very pleased to have this opportunity to meet with the committee and to express the views of the Ontario Association of Deans of Education. I am the chair. I'm also the dean of education at the University of Windsor.

In response to some of the changes, I would like to address three issues only, and those are two issues around the new teacher induction program and also the proposed new structure of the Ontario College of Teachers.

OADE would like to, first of all, say that they commend the government on the improved climate for teacher education for teaching generally in the province. We particularly commend the ministry on the removal of the Ontario teachers' qualification test. I'm sure that's no surprise to you. Nevertheless, while we believe that the NTIP program, the new teacher induction program, is an excellent alternative to the paper-and-pencil test that was applied previously, we believe that the teacher induction component could be strengthened. Furthermore, we anticipate serious consequences for the implementation of our teaching practica arising from the mentoring component, and we're hoping that we can be a solution to this rather than simply complaining about it.

First, teacher induction: We believe that teacher education should be inquiry-based, which means expanding the teacher's understanding beyond their immediate context. We also believe that the involvement of university faculty members could significantly enhance the offerings of school boards and school districts and provide the continuity that we feel is needed between teacher preparation and teacher induction. We hope that there will be room for our involvement in the new teacher induction program.

Secondly, mentoring: Although we agree that mentoring should be a very prominent part of the NTIP program, its impact on the overall availability of associate teachers for our teacher candidates we feel may be serious. The best mentors for new teachers and also the teacher candidates are typically one and the same. We're already experiencing difficulties maintaining an adequate pool of associate teachers because of competition from

private institutions and out-of-province teacher education programs. The Ministries of Education and Training, Colleges and Universities—we'd like to see those two ministries working together to try and address the uneven playing field that has been created by the unfettered tuition fees that private institutions are able to get from students and therefore are able to pay much higher practicum honoraria than those paid by the Ontario publicly assisted faculties and schools of education.

With a program that involves new teacher induction, new teacher orientation and practicum, with those two components being essential to new teacher preparation, it's possible to provide professional development in the area of mentoring, perhaps through AQs. There is an additional qualification on the books right now for associate teacher qualification. One possible solution might be to involve the faculties with some financial support through the ministry in offering mentoring programs or an additional qualification with a greater focus on mentoring to teachers who will be providing the mentoring for the associate teachers and the teacher candidates.

Turning now to restructuring of the Ontario College of Teachers, we note that currently the Ontario College of Teachers council includes principal representation and supervisory officer representation, along with an elected faculty member from the schools and faculties of education. However, it should be noted that having an elected faculty member on the council does not mean that the Ontario faculties of education necessarily have representation. It's not an institutional position.

1810

Given that the college has such a role in the accreditation of new and existing faculty and schools of education programs, because of that role and also because of the role of the college in accrediting our additional qualification programs, we would like to see two OADE members on the council, one representing the franco-phone institutions and the other the English faculties and schools of education. We'd like to see two institutional representatives on the council. I'm trying to hurry this, so I'm afraid I'm gabbling my words. Sorry about this. We feel that having representation from OADE on council will give the council a more rounded view of teacher education than it might have by having elected faculty representatives.

That's really it. I'm very grateful to you for giving us an opportunity to speak, and look forward to seeing the final bill and hope that the input we've provided may have some impact on that.

The Chair: Thank you, Dean Rogers. We have a generous amount of time; about three minutes each side, beginning with the Liberals.

Mr. Khalil Ramal (London-Fanshawe): Thank you for your presentation. I heard you talking about several things, but the most important thing you said is if we create an induction program and dump the mentoring by the teachers, you're concerned it would create more of a workload for the teachers.

We met with several teachers across Ontario. They came to us, and we met with them. They like to do it,

with happiness; they have no concerns whatsoever about this issue. Also, I don't know how you gather your own information.

The second question—you mentioned you want to strengthen the induction program. Can you give the committee some kind of recommendation?

Dr. Rogers: I wanted to restrict it?

Mr. Ramal: Strengthen.

Dr. Rogers: Oh, strengthen it; sorry. The first question—I'm glad to hear that the teachers are welcoming mentoring as part of the program. What we're concerned about is that the teachers who will be good mentors for new teachers are probably the same teachers who are mentoring our teacher candidates. We're having problems, especially in certain parts of the province, in getting enough associate teachers to mentor our teacher candidates as it is. If they're now having to provide another mentoring role, then we're really worried that we will actually lose associate teachers in that process.

Maybe there's a way of triangulating this relationship so that a mentor would mentor both a new teacher and a teacher candidate too. That could be a really positive experience for all three, I think. But we are concerned about the available supply of associate teachers.

Shall I go to the second question? Strengthening the NTIP program: Where we see a strengthening is in terms of the mentoring role that the teachers would provide. We would like to see perhaps some professional development in terms of the mentoring. That could be the involvement of a faculty of education. But at the moment, the way we see the NTIP program, we don't see a role for the faculties of education necessarily. That may happen in certain jurisdictions, but it's not written into the NTIP program. We would like to have a role in continuing with the teacher candidates into their role as new teachers. We see that really as strengthening the whole system.

Ms. Wynne: I just wanted to go back to the first point for a sec and ask whether you've had conversations with the ministry about this concern.

Dr. Rogers: Yes, we've raised this concern in a letter to Dr. Ben Levin and we've also discussed it in our monthly meetings.

Ms. Wynne: So as this rolls out, that conversation will go on.

Dr. Rogers: It will continue.

Ms. Wynne: Because you're talking about a finite pool of teachers whom you want to draw from.

Dr. Rogers: Yes.

Ms. Wynne: Okay. Thanks for your concern.

Mr. Klees: Thank you for your presentation. You make reference to the fact that section 10.1 is being replaced with the mentoring induction program, effectively. I'd just like to ask you whether, from your perspective, you believe that to eliminate the qualifying test for teachers is a positive step and not necessarily—I don't believe this should be viewed as having an induction program versus the qualifying test. I don't know of any other jurisdictions, and maybe you can help me,

where there isn't a qualifying test where teachers have come out of their teachers' colleges and then moved into the teaching profession. This government's chosen to eliminate that test and replace it with an induction program. I would think that a combination of those would serve us very well. I'd be interested in your view.

Dr. Rogers: This is my view, but I think it is also the view of the majority of my colleagues in OADE: A paper-and-pencil test is not a test of what will make a good teacher. In fact, we already have tests in our faculty of education programs. Our students take paper-and-pencil tests on knowledge as well as other assignments that test their understanding of the information they're learning and their ability to actually apply this in the classroom. So I do see it as a very positive outcome that the OTQT has gone. Whether there is a test as part of the NTIP or not—I don't see it in the language of the bill—I think that teachers grow over time, and that their growth over time is much better served by mentoring and by the orientation program that's envisaged.

Mr. Klees: With regard to the college of teachers, do you believe the college of teachers has been doing a good job in terms of its oversight of curriculum and teacher training programs?

Dr. Rogers: Doing a good job? I think there are lots of improvements that could be made. The faculties have been concerned right from the beginning at the lack of involvement of faculties on the accreditation panels. There have been significant changes to those panels over time. Having just gone through one myself, I can say that the process this time was a lot fairer and a lot better than it was in the earlier time.

One of my concerns is that there isn't a tremendous amount of information given in the actual accreditation document in terms of what might be improved. In actual fact, when my own team had a faculty of education representative on it, we were given a lot of feedback off the record, which was very helpful to us in terms of developing our program further. So I actually think that the inclusion of members of faculties of education in the college will help everyone. It'll be a win-win all around.

Mr. Klees: I would support, by the way: your recommendation to add the two OADE members. That's a very positive suggestion.

Dr. Rogers: Thank you.

The Chair: Thank you, Mr. Klees. Thank you as well, Dean Rogers, for your presence and written submission.

ROBERT PATERSON

The Chair: We have now our final presenter of the committee's hearings today, Mr. Robert Paterson, who comes to us in his capacity as a private individual. Mr. Paterson, we welcome you. Your time, 10 minutes, begins now.

Mr. Robert Paterson: I would like to thank the committee for taking the time to hear me. I hope the brevity of my presentation does not diminish its significance.

I'm an employee of the Thames Valley District School Board, with more than 30 years' experience as a salaried contract teacher of adolescents, an hourly-paid adult education teacher, a night schoolteacher of both adults and adolescents, and a summer schoolteacher of adolescents. Broadly placed, we're in the continuing education teacher category.

I believe this group of teachers, hourly-paid continuing education teachers, are the only hourly-paid teachers who are expected by their employers and legally required by the present Education Act to perform duties considered essential to the execution of their profession without being paid for them.

May I give you a couple of examples? In the summer of 1999, I taught two grade 13 mathematics courses to two classes of adolescents. Following the morning writing of a three-hour final examination by all of the students in my classes, I was expected by my principal to fairly mark the approximately 60 examinations and prepare individual reports for each of these 60 students by the next morning. After working approximately 12 hours on these expected but unpaid duties, I was severely reprimanded by my principal for failing to complete my duties on time.

Last fall, a survey which I conducted of my colleagues, who are adult education teachers, indicated that it is quite normal for English teachers to spend an hour of unpaid time outside of the classroom completing their duties for every hour they spend inside the classroom teaching. Commenting on the survey, my own principal, a former English teacher herself, admitted that it would be impossible to do a proper job of teaching an English course in the classroom time that was allotted.

1820

I have raised this matter with the Ministry of Labour and have been informed by Minister Peters's office that correcting the obvious inequity is the responsibility of the contract bargaining arm of our teachers' federation, OSSTF. I have also applied to the provincial Pay Equity Office and have been informed that the inequity that exists does not fall within the jurisdiction of the office, but was told, yes, it's the responsibility of the teachers' bargaining group.

Our teachers' bargaining group, however, maintains that the Education Act legally allows the employer to assign to any hourly-paid teacher any duties in accordance with the act. Thus, it seems that only an amendment to the Education Act can correct this obvious inequity. Hence, I am requesting that the committee adopt my proposed addition to the act, which would require school boards, through their principals, to assign only duties to hourly-paid teachers which would be expected to be completed during the time for which the teachers are paid: the condition and right of every other hourly-paid employee in Ontario.

Thank you for allowing me to make this presentation.

The Chair: Thank you, Mr. Paterson. We have almost three and a half minutes for each side, beginning with Mr. Klees.

Mr. Klees: Mr. Paterson, are you a member of the federation?

Mr. Paterson: I am.

Mr. Klees: What is it that your federation tells you when you raise this issue with them?

Mr. Paterson: The federation tells me that there is nothing they can do because the Education Act allows any duties to be assigned to a teacher. There's no distinction between salaried teachers and those who are paid hourly.

Mr. Klees: We heard earlier from principals and others that collective bargaining agreements that have been negotiated in this province apparently supersede a lot of the legislative requirements. In fact, on the supervisory side, we have principals across the province who are in serious trouble because the provisions of the collective bargaining agreement relating to supervision time and so on are actually out of sync with what the legislative requirements are.

Here's my question to you: In light of the fact that the federations have been able to negotiate some pretty strong agreements, notwithstanding what the legislative framework is, why have they not stood squarely behind you?

Mr. Paterson: We represent a very small group of the secondary teachers in Ontario. I guess I would like to pose your question to our provincial executive: Why have they not stood squarely behind us?

Mr. Klees: And it should be, and I think by virtue of this discussion it's being posed to them. I would also pose the same question to the government—because essentially it was the Minister of Education who negotiated those contracts in the last round—why the government would not stand four-square behind you as well. What I'm hearing is most unfair. You're a very special class of teacher for some reason, and it's almost as though you're an indentured servant. In today's enlightened world, why would this government, which is so strongly supportive of peace and stability—maybe it's because you're not threatening a strike; maybe it's because you're not threatening to disrupt their peace-and-stability motto that nothing's happening for you. What do you think?

Mr. Paterson: The flea has a hard time making the elephant change direction.

Mr. Klees: I would urge you to take this up in a very public way with your union. I think that if the general public knew you were being discriminated against the way you are, they would side with you. This is the first time I've heard this.

Interjection.

Mr. Klees: Kathleen Wynne, who is the parliamentary assistant to the Minister of Education, I'm sure will have a good explanation for you as to why you're being treated differently.

The Chair: Thank you, Mr. Klees. We'll now move to the government side.

Mr. Ramal: Thank you, Mr. Paterson, for your presentation. We both come from London. I'm from London,

Ontario. London-Fanshawe. I think you teach at Wheable?

Mr. Paterson: I do.

Mr. Ramal: I went to Wheable school. I studied English—

Mr. Peterson: Excellent.

Mr. Ramal: So I know what your frustration is all about. I want to thank you for coming forward and presenting to us and voicing your concerns.

I want to thank Mr. Klees for paying attention again to education. Hopefully, he'll continue paying attention and supporting public education in this province.

I don't know how we can address your concern—

Mr. Klees: Just answer his question as to why you're treating him so differently.

Mr. Ramal: I'm going to answer his question.

I wonder how we can address your concern in this bill. This is part of the collective bargaining agreement between teachers and the school boards, and this is what happened. So how can we address it, in your opinion?

Mr. Paterson: My opinion, as very strongly put to me by my own principal: "The Education Act gives me the right; I will exercise that right. If you expect to withdraw services by only working during the time during which you are paid, I will consider that to be work-to-rule, approximating a strike."

Ms. Wynne: Thank you very much for coming, Mr. Paterson. When I was engaged in doing a review of adult education around the province, I visited the Wheable centre, and it was one of the places that we heard about the discrepancy between instructors and full-time teachers, or teachers with other status. The underlying issue is the change in status of adult education that happened under the previous government.

The concern I have is that, rather than narrowing, what we should be doing is revaluing adult education. It was the first thing that went on the chopping block when the

previous government was in office, and what we need to be doing is recognizing—and that's what my report, Ontario Learns, says—the importance of adult education and the status of the teachers who are delivering those very important programs. If we can get to that point—but it's very difficult. You'll understand the political position we're under, because there were so many other areas that were decimated under the previous government that to make the argument for adult education becomes difficult because people look to the children.

I know that adult educators are aware of the concerns, but underlying it is the real lack of value that the previous government paid to adult education.

Interjections.

Mr. Paterson: May I respond, please?

Ms. Wynne: Absolutely.

Mr. Paterson: I have no problem being paid as an hourly-paid teacher.

Ms. Wynne: I understand.

Mr. Paterson: I find myself currently making less than custodial staff, making less than secretarial support staff, less than virtually every other permanent employee in the board. All I would like to do is to be put in the same position as a custodian or a clerical support staff of being paid for all the work that's expected of me.

Ms. Wynne: I take your point, yes.

Mr. Paterson: If I don't wish to be paid as an hourly-paid employee, I'm happy to move to a contract. But the way the situation is right now, I am an hourly-paid employee.

Ms. Wynne: Thank you.

The Chair: Thank you, Ms. Wynne, and thank you to you as well, Mr. Paterson.

Seeing no further business for the committee, I declare the committee adjourned till tomorrow after routine proceedings. Thank you.

The committee adjourned at 1827.

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Standing committee on social policy

Education Statute Law
Amendment Act
(Student Performance), 2006

Comité permanent de la politique sociale

Loi de 2006 modifiant des lois
en ce qui concerne l'éducation
(rendement des élèves)

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 16 May 2006

Mardi 16 mai 2006

*The committee met at 1558 in committee room 1.*EDUCATION STATUTE LAW
AMENDMENT ACT

(STUDENT PERFORMANCE), 2006

LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'ÉDUCATION
(RENDEMENT DES ÉLÈVES)

Consideration of Bill 78, An Act to amend the Education Act, the Ontario College of Teachers Act, 1996 and certain other statutes relating to education / Projet de loi 78, Loi modifiant la Loi sur l'éducation, la Loi de 1996 sur l'Ordre des enseignantes et des enseignants de l'Ontario et certaines autres lois se rapportant à l'éducation.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. As you know, we're here for clause-by-clause for the Education Act, Bill 78. If there are no immediate comments from the committee, we'll begin immediately.

We have, with reference to section 1, PC section labelled 0.1, and I give the floor to Mr. Klees.

Mr. Frank Klees (Oak Ridges): I will just move this motion.

I move that the definition of "principal" in subsection 1(1) of the Education Act be repealed and the following substituted:

"'principal' means a teacher appointed by a board to perform, in respect of one or more schools, subjects or programs or in respect of any combination of them, the duties of a principal under this act and the regulations;"

This expansion of the definition is there to broaden the definition and for clarity. I would ask that the committee consider it.

The Chair: Thank you, Mr. Klees. I'm informed by legislative counsel that this particular motion that you've just read is out of order. I would, with the committee's indulgence, offer the floor to legislative counsel Cornelia Schuh to give an explanation. Part of the reason for that is that I understand we have a number of motions that fall under this same category.

Ms. Cornelia Schuh: In traditional parliamentary procedure, a motion that seeks to deal with a section of the act that isn't already open in the bill is out of order unless it's essential to correct a mistake, an inconsistency. It can be introduced with unanimous consent.

Mr. Klees: I would ask, then, for unanimous consent by the committee to deal with this.

The Chair: Do I have unanimous consent?

Mr. Khalil Ramal (London-Fanshawe): No.

The Chair: Seeing that I do not have unanimous consent, I continue to rule this section out of order. We proceed now to the next page, which is, as you can see, government section motion 1. I would invite one of the government members to please propose this formally to the committee.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): I move that section 1 of the bill be struck out and the following substituted:

"1. The Education Act is amended by adding the following section:

"Collection and use of personal information

"8.1(1) The minister may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

"1. Administering this act and the regulations, and implementing the policies and guidelines made under this act.

"2. Ensuring compliance with this act, the regulations, and the policies and guidelines made under this act.

"3. Planning or delivering programs or services that the ministry provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.

"4. Risk management, error management or activities to improve or maintain the quality of the programs or services that the ministry provides or funds, in whole or in part.

"5. Research and statistical activities that relate to education and are conducted by or on behalf of the ministry.

"Limits on collection and use

"(2) The minister shall not collect or use personal information if other information will serve the purpose of the collection or use.

"Same

"(3) The minister shall not collect or use more personal information than is reasonably necessary to meet the purpose of the collection or use.

"Collection and use of personal information for research

"(4) The collection or use of personal information for purposes related to research activities mentioned in

paragraph 5 of subsection (1) is subject to any requirements and restrictions that may be prescribed.

"Disclosure by educational and training institutions, etc.

"(5) The minister may require any of the following to disclose to him or her such personal information as is reasonably necessary for the purposes described in subsection (1):

"1. Educational and training institutions that are prescribed for the purposes of sections 266.2 to 266.5.

"2. Persons and entities that are prescribed for the purposes of subsection 266.3(3).

"Same

"(6) The minister may specify the time at which, and the form in which, the information must be provided.

"Notice required by s.39(2) of FIPPA

"(7) If the minister collects personal information indirectly under subsection (1), the notice required by subsection 39(2) of the Freedom of Information and Protection of Privacy Act is given by,

"(a) a public notice posted on the ministry's website; or

"(b) any other method that may be prescribed.

"Regulations

"(8) The Lieutenant Governor in Council may make regulations for the purposes of this section,

"(a) prescribing requirements and restrictions for the purposes of subsection (4);

"(b) prescribing methods of giving the notice required by subsection 39(2) of the Freedom of Information and Protection of Privacy Act."

That's the motion. This motion would ensure that the sections in the act related to the collection and use of personal information are in compliance with all of the privacy requirements as set out in provincial and federal privacy legislation. This motion, I should note, reflects directly discussions and agreement around said information with the information and privacy commission.

The Chair: Thank you, Mr. McMeekin. The floor is open for debate, questions and comments.

Mr. Klees: Do we have something in writing from the privacy commissioner confirming her endorsement of this section, specifically the wording?

Mr. McMeekin: I can't answer that. I can say that we have had direct consultation and that the motion I just took some considerable time to read is a reflection of those consultations and reflects the advice we received from the privacy commissioner.

Mr. Klees: With all respect, the current Minister of Education, in her capacity as the Minister of Community and Social Services, told us time and time again of her consultations with the privacy commissioner relating to the adoption bill. Lo and behold, when the privacy commissioner appeared before committee, she opposed and made it very clear that she had not endorsed and in fact was strongly opposed to sections of that bill for the purpose of privacy. So it's not comforting at all to hear from you that consultations have taken—why would we

not have something in writing from the privacy commissioner on this?

The Chair: Also, on behalf of the committee, I as Chair would like to know, do we have ministry staff who are prepared to address these issues or these questions, these types of intricacies?

Mr. McMeekin: In a word, yes.

The Chair: If so, would they please come forward and identify themselves?

Mr. McMeekin: Let me just say, while we're doing that, that we approached the privacy commission. It wasn't that the privacy commission had any concerns at all about this. In fact, in the process of preparing the legislation, as you might expect with any government that wants to do it right, there were those obvious discussions that took place. If my honourable friend would like us to undertake to obtain some covenant of this from the commission, I'm sure we could do that.

The Chair: Thank you. Welcome and please identify yourself.

Mr. Michael Riley: My name is Mike Riley. I'm with the legal branch of the Ministry of Education. I don't have any such documentary evidence with me. I do understand, however, from my colleagues that there were extensive and quite thorough consultations with the Information and Privacy Commissioner on this matter, but I do not have any form of written confirmation.

Mr. Klees: I would request that we receive, as was volunteered by the parliamentary assistant, some documentary evidence of that.

Mr. McMeekin: Request noted.

Mr. Klees: I have another question, and I'm looking at these proposed amendments. In the past we've had some assistance, especially when there's an extensive amendment, indicating which parts of the original bill are being amended. This is going to be a difficult process for us here, trying to figure out what's out and what's in. I'm just wondering, is there some other documentation that the government has that's going to make it a little easier for us here, or is the parliamentary assistant simply willing to take me through this line by line to show me what's replaced by what? I'm happy for that.

1610

Mr. McMeekin: I can't comment on the specific comments; I wasn't part of the actual consultations with the commission. I would note that it's also customary for all amendments to legislation to be presented well in advance of discussion. We have several that have appeared today where that hasn't happened. I don't want to get rudimentary about this—it's in the member's hands; he can do what he wants—but this is the amendment and it captures, as we were requested to capture, any changes or improvements that the privacy office would suggest. That's what we've done.

Mr. Klees: Perhaps I can help, Chair. If the parliamentary assistant can advise me if there are any changes in the section entitled, "Collection of personal information," (2)(a), (b), (c), (d) and (e)? Are there any changes to that?

Mr. McMeekin: What we have are the changes that are being proposed.

Mr. Klees: If that's how we're going to proceed, Chair, we're going to be here a very long time. Are you saying the parliamentary assistant can't point me to where those changes are?

Mr. McMeekin: If you want to go through the bill line by line, we can do that, Mr. Klees. What is in the bill is there; the amendment is here. That information is available to you. The amendment that we're proposing is there. It has been brought forward in good faith, based on the discussions we've had. The commas, the i's and t's and the the's: I haven't prepped to that extent around every sentence change, grammatical change and slight enhancement that the consultation has led us to at this point.

The Chair: As Chair, I would simply say once again that to facilitate the answer to Mr. Klees's question, it be provided by either government members or by ministry staff, or at least an undertaking by some group to offer that information. Otherwise, we don't move on.

Mr. McMeekin: There's a generic reference throughout many of the lines to adding regulations, because we wanted to ensure that we were inclusive, both in the statutory requirements and the regulations, that we were honouring the privacy concerns. Respectfully, Mr. Klees, that was a change that we've incorporated, as you'll note, in several places.

Mr. Klees: I understand that. I'm not trying to be difficult; I'm trying to do my job here conscientiously. For me to have to go through line by line and word for word to find out where the changes are if I'm going to express an opinion or cast a vote on this amendment—I'm just saying that it would be extremely helpful for us to know where the changes are.

The Chair: With your indulgence, Mr. Marchese. Ms.—

Interjection.

The Chair: All right, fine. Mr. Marchese.

Mr. Rosario Marchese (Trinity-Spadina): Just to be frank and fair, no government has ever provided us with a list of changes that have been made. The Tories didn't do it, we didn't do it and the Liberals are not doing it. It leaves us with the job of having to look at the original bill and look at the additions. That being said, if there is a ministry official who's here who has knowledge of this and wants to help the member with the additions, it might help. Otherwise, the member could ask questions on every section and say, "Is this new? What does this mean?" He could, and it will slow down the process. You might want to find a way to be helpful.

The Chair: Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): I just wanted to comment. I've spent a lot of the last two and a half years in committee hearings. I'm sure that the member has his copy of the bill, with his highlighted places where people have made comments, and I'm sure that, as I am, he's able to follow along in the bill, because he's been sitting in on all of the hearings. I've been in

many bills now, and I've never, ever seen that kind of tracking. I've got my highlighted copy. If he'd like to see where the amendments are, I'd be happy to lend it to him, but other than that, it would be really unusual to expect that kind of tracking.

Mr. Marchese: Mr. Chair, I was indicating that the member could slow the whole process down, as he indicated, to ask questions on every section. That's not helpful. Is that what you—

Ms. Wynne: He could choose to do that.

Mr. Marchese: Mr. Klees, then it's up to you to decide how to proceed.

Ms. Wynne: Or he can borrow my bill.

The Chair: Hopefully, as Chair, I'm attempting to facilitate this, so I would invite ministry staff, if they are able to comment on these issues, to please come forward and, by the way, remain forward until that particular section is dealt with.

Having said that, I will ask legislative counsel to weigh in on this issue as well. Madam Schuh.

Ms. Schuh: Mr. Marchese is right. There isn't a practice of providing a road map, as it were, but I'd be very happy to explain to anyone who wants where individual motions will fit in the printed bill. I think we can deal with it in a pretty straightforward way.

The Chair: Is that satisfactory, Mr. Klees?

Mr. Klees: I think I just heard Ms. Wynne say that she has a highlighted copy.

Ms. Wynne: Sure, my copy of the bill. I'm sure you've got one too.

Mr. Klees: And if in fact she has a highlighted copy, my first question is, why would I not have a copy of it and—

Ms. Wynne: Because it's mine.

Mr. Klees: She's offered to give it to me.

Ms. Wynne: It's my highlight.

Mr. Klees: She has offered it; I accept it. It will certainly—

Ms. Wynne: I'll make a copy of it for you.

Mr. Klees: Wonderful. It certainly will help.

Ms. Wynne: Great.

The Chair: Do I take it, committee, that we are ready to—Mr. Marchese?

Mr. Marchese: In the meantime, I have questions.

The Chair: Then please proceed.

Mr. Marchese: To the parliamentary assistant or any government member, and then I'll get to legislative counsel for a question or comment—maybe the government wants to answer: The problem I have with this section is that none of you explained why we need to do this, and it would be useful to hear why. You explained that it's in compliance with the privacy requirements, but you have not once offered why we need to do this.

Secondly, we haven't heard what kind of information you're looking for. Is it on students, is it on teachers? How will this information be stored? Where will it be stored? Who will it be made available to? Will the private operators have any access to this information?

Will parents and teachers have to sign release forms? Can they refuse to have the information collected?

They're questions I want anyone to answer to make me feel better, and then I've got a few questions on some of the legislative legal changes in terms of—you might want to respond, but the government can respond as well. But if I get those answered, then I can move on to two other sections of the new additions that I have questions to.

Mr. McMeekin: We'll have to go to the staff for those answers.

The Chair: Thank you, Mr. Marchese.

Mr. Marchese: If staff is here, ready to deal with that, that's great. If not, I'll ask my other questions.

The Chair: The Chair turns this question and others to the government side and/or staff and would invite them to comply. Please come forward.

Mr. Riley: I'm sorry. How can I help?

The Chair: Mr. Marchese.

Mr. Marchese: I have some questions. I'll just repeat them, because what we haven't heard is a rationale for having this section. So my question was, why do we need to collect this information, and, secondly, what kind of information is it that you're looking for? Is it on students? Is it on teachers? How will this information be stored? Where will it be stored? Who will it be made available to? Will private operators have access? Will parents and teachers have to sign release forms? Can they refuse to have the information collected?

1620

Mr. Riley: I'm sure I cannot answer all those questions. I do know that the information is not collected just with respect to pupils or just with respect to teachers. That is about all I know as to the questions you've asked. I'm sorry.

The Chair: The Chair offers to Mr. Marchese that if you're satisfied with that answer or an undertaking to provide you with that information at a later date, we'll accept that. If not, then the floor is yours.

Mr. Marchese: The sad thing, when we're dealing with a bill, is to have to get this information after the bill gets passed. We are referring it for third reading after today. Do you understand how sad it is not to be able to have a rationale for this? If he can't answer it, it speaks badly of the government not to be able to have a rationale while we collect the information.

Ms. Elisabeth Scarff: I'm Elisabeth Scarff, with the legal services branch of the ministry. We apologize. We're trying to track down our colleague who was working on this section. She wasn't available, but we are trying to track her down to see if we can get her here this afternoon.

Mr. McMeekin: Why don't we stand this down until that staff person is here to answer those kinds of questions?

The Chair: Is that acceptable, Mr. Marchese?

Mr. Marchese: Yes, it is. Thank you.

The Chair: Fair enough. We're bypassing consideration of that particular government motion. We'll now move to the next item, PC section 1, labelled 1.1.

Mr. Klees: I will stand this down as well until we get the staff in.

The Chair: Thank you, Mr. Klees. May I take it as the will of the committee to consider sections 2 and 3 en bloc?

Mr. Marchese: What did you just ask?

The Chair: Could we consider and vote on sections 2 and 3, seeing there are no amendments proposed so far?

Mr. Marchese: Sections 2 and 3.

The Chair: We've essentially deferred consideration of section 1 for now.

Mr. Marchese: The whole section?

The Chair: Yes.

Mr. Marchese: Section 2 is the next motion we're dealing with here.

The Chair: There are no amendments proposed so far.

Mr. Marchese: Very good. Go ahead.

The Chair: Taking it as the will of the committee, shall sections 2 and 3 carry? Carried.

We'll now proceed to consideration of section 4, the government section labelled number 2. I invite one of the government members—Mr. McMeekin.

Mr. McMeekin: I'll go as long as my voice holds out, and then I'll yield to one of my colleagues, probably Ms. Wynne.

I move that section 11.1 of the Education Act, as set out in section 4 of the bill, be amended by adding the following subsections:

“Consultation

“(1.1) Before the Lieutenant Governor in Council makes a regulation under subsection (1), the minister shall consult with,

“(a) the Ontario Public School Boards' Association;

“(b) the Ontario Catholic School Trustees' Association;

“(c) l'Association des conseillères et des conseillers des écoles publiques de l'Ontario;

“(d) l'Association franco-ontarienne des conseils scolaires catholiques; and

“(e) any other persons and entities that, in the minister's opinion, have an interest in the proposed regulation.

“Notice

“(1.2) The minister shall give the persons and entities listed in subsection (1.1) and members of the public notice of the proposed regulation, in the manner he or she considers appropriate, at least 60 days before the regulation is filed with the registrar of regulations.

“Same

“(1.3) The notice need not contain a draft of the proposed regulation, but shall summarize its content and intended effect.

“Exception

“(1.4) Subsections (1.1), (1.2) and (1.3) do not apply if the regulation, in the minister's opinion,

“(a) is needed to deal with an urgent situation;

“(b) is needed only to clarify the intent or operation of the act or regulations; or

“(c) is of a minor or technical nature.”

This was in response to the government's repeated assertion that we were going to consult and some of the stakeholders essentially saying, “Prove it.” So we've come to the table with this amendment, which we think is in keeping with the spirit of the approach this government is taking. We have tried, in good faith, to be as definitive with respect to this as we can.

The Chair: The floor is open for debate, questions or comments. Mr. Klees.

Mr. Klees: I'll let Mr. Marchese go ahead.

The Chair: Mr. Marchese.

Mr. Marchese: I'm going to speak against the whole section, when we get to the bill in terms of debate on every section. But as it relates to the changes that have been made, “shall consult with” means nothing to me, and I suspect it ought to mean nothing to boards. It's true that some boards said, “Please consult us,” and so it's a good thing that you put it in, but it means nothing to me. In terms of consulting, what does that mean? “Hello, Frank, it's nice to chat with you. By the way, we're proposing to make these changes. I know you might not like them, but let's talk.” So you talk, or you might have a meeting. I don't know what kind of meeting you might have with the trustees, boards or associations. We don't have any sense of what those consultations are going to be. Once you've made up your mind about what changes you want, the fact that you consult them makes no difference in terms of the effect it will have on changing the direction of the government. So it is of little purpose, to me.

Of interest to me is that you didn't include any of the teachers' federations in these discussions. It was important for you to put in that you would consult with boards, but you don't want to consult with the teachers' federations. I found that, perhaps, an oversight.

On the other page, you talk about:

“Exception

“Subsections ... do not apply if the regulation, in the minister's opinion,

“(a) is needed to deal with an urgent situation.”

So consultation will not apply if there's an urgent situation. I don't know what that means, but maybe you do, maybe the government does, maybe the minister does, maybe the staff know. I don't know.

“(b) is needed only to clarify the intent or operation of the act or regulations.”

The minister defines what that might be. Maybe ministry staff people know; I don't have a clue. And they don't need to consult if it's “of a minor or technical nature,” meaning that you define what is “minor” and of a “technical nature.” So you've got “shall consult,” but the next page says there are exceptions. So they'll be able to do a whole lot of things without having to consult you, and if they consult you, it means nothing because you can't effect any change on their direction.

I speak against this amendment, and I'm going to speak against the whole section when we get to it. I'll give reasons then.

Mr. Klees: I have a question for the parliamentary assistant. Subsection (1.3) refers to the fact that “the notice need not contain a draft of the proposed regulation, but shall summarize its content and intended effect.” I don't understand: If the consultation is related to the proposed regulation, why would the actual proposed regulation not be made available for that discussion? What is the purpose of this section?

Mr. McMeekin: The purpose of the entire amendment reflects what we like to think is a relationship of trust in motive. The government has come to the table and said, “We want to be consultative and collaborative.” This is a big improvement, I would say, with respect to the original proposal where it would just be done without any consultation. We're trying to put a process in place where there is notice, 60 days given, of the intent of a regulation. Obviously you want to be consultative about that. You want to be open to suggestions about the actual wording of the regulations. It would seem to be potentially time-wasteful and perhaps counterintuitive to be doing each and every regulation with a 60-day waiting period. We could go on forever.

We're trying to come to the table with something that works and that is consistent with our commitment and, frankly, a tremendous enhancement thanks to the stakeholder input that we received from the original proposal. It gives it some real meat.

1630

The Chair: Any further questions or comments on this particular item? No. I'll proceed to the vote. All those in favour of this particular motion on page 2? All opposed? Motion carried.

We'll proceed now to the next motion, labelled 2.1, PC.

Mr. Klees: I move that subsection 11.1(2) of the Education Act, as set out in section 4 of the bill, be amended by striking out clause (b).

The Chair: The floor is open for questions or comments. Seeing none, we'll proceed to the vote if that's the will of the committee. All those in favour of PC motion 2.1? All opposed? I declared the motion lost.

We'll move to the next motion, 2.2, PC.

Mr. Klees: I move that subsection 11.1(2) of the Education Act, as set out in section 4 of the bill, be amended by adding the following clause:

“(h) adopt and implement measures to protect the instructional time of pupils.”

The Chair: Questions, comment? Seeing none, we'll proceed to the vote. All those in favour of PC motion 2.2? All those opposed? I declare that motion lost.

Next motion, 2.3.

Mr. Klees: I move that section 11.1 of the Education Act, as set out in section 4 of the bill, be amended by striking out subsection (3).

The Chair: Any questions, comments, debate? Seeing none, we'll proceed to the vote. All those in favour of PC motion 2.3? All those opposed? I declare the motion lost.

I now move to government motion 3.

Ms. Wynne: I move that section 11.1 of the Education Act, as set out in section 4 of the bill, be amended by adding the following subsection:

“General or particular

“(4) A regulation made under subsection (1) may be general or particular.”

The Chair: Questions, comments?

Mr. Marchese: Could legislative counsel explain the addition? I think the addition is “particular.” Is that correct?

Ms. Schuh: “Particular,” yes.

Mr. Marchese: And could you explain the need for the word “particular”?

Ms. Schuh: This is the conventional provision that you’ll see in a lot of statutes that authorizes categorizing people and things in the regulation, and dealing with different categories in different ways, so the regulation doesn’t have to treat the entire province in the same way. It’s possible to make distinctions.

Mr. Marchese: If the word “particular” were not there, what would the effect of that be? What could happen? If the word “particular” were absent, what might arise that would be of concern to us?

Ms. Schuh: I’m really not sure of a specific example here. Perhaps ministry staff can speak to that.

Mr. Marchese: Does any ministry staff know? If not, they don’t have to come forward.

Mr. Imants Abols: My name is Imants Abols. I’m legal counsel with the Ministry of Education. The first name is Imants. Abols is the surname.

I’m not sure I understand your question. Are you saying that if you didn’t have the word “particular,” how would this section apply?

Mr. Marchese: “Particular” is an addition. Is that correct?

Mr. Abols: Yes.

Mr. Marchese: Why was it added? What would the effect of not having “particular” be on this legislation?

Mr. Abols: The effect of not having “particular”: As leg. counsel pointed out, this is a sort of standard boilerplate provision that allows you to make regulations that say this regulation applies to group A as opposed to simply applying to everybody in the province. If you took out the word “particular,” the section doesn’t make any sense; you don’t need the section at all. So “particular” is really the essence of the section.

Mr. Marchese: So the word “particular” was an oversight in terms of the initial—

Mr. Abols: This whole section wasn’t there in the original bill.

Mr. Marchese: The whole section wasn’t there but “general” was there.

Mr. Abols: Yes.

Mr. Klees: So this relates or is limited to regulations relating to the duties of the boards. Is that correct?

Mr. Abols: It relates to those new provisions under what is called the provincial interest in education, those reg.-making powers under that section. That’s right.

Mr. Klees: Thank you.

The Chair: Thank you. If there are no further questions and comments, we’ll proceed to the vote. All those in favour of government motion 3? All those opposed? I declare the motion carried.

We’ll now proceed to NDP motion 4.

Mr. Marchese: I understand that moving such a motion would be out of order but I will speak against this section. My attempt here was simply to try to delete, expunge, get rid of this total section, that I will vote against it and speak against it when the time comes.

The Chair: Mr. Marchese, yes, you’re correct that this particular motion, proposal, is out of order. If you need leg. counsel to explain that again, I will offer the floor to her. If not, we’ll proceed to the next item.

Interjection.

The Chair: Proceeding to the next item, PC motion 4.1.

Mr. Klees: It’s item 5.

The Chair: PC item 4.1.

Mr. Klees: Same motion as Mr. Marchese with regard to this matter.

The Chair: Thank you. That is also out of order.

We shall now proceed to the consideration of section 4. All those in favour of section 4, as amended? All those opposed? I declare section 4, as amended, to have carried.

May I take the will of the committee to be to move directly to the vote for section 5, seeing as there are no amendments so far received or proposed? All those in favour of section 5?

Yes, Ms. Wynne?

Ms. Wynne: So we’re voting on section 5?

The Chair: We’re now voting on section 5. All those in favour of section 5? All those opposed? I declare section 5 to have carried.

We’ll now proceed, in section 6, to government motion number 5.

One of the government members.

Mr. McMeekin: I move that subsections 55(8) to (12) of the Education Act, as set out in section 6 of the bill, be struck out and the following substituted:

“Honarium

“(8) A student trustee is entitled to receive an honorarium from the board in accordance with the regulations, if the specified conditions are satisfied.

“Regulations

“(9) Without limiting the generality of subsection (1), a regulation under that subsection may,

“(a) provide for and govern the student trustee election process, which may be direct or indirect;

“(b) specify qualifications for electors of student trustees;

“(c) specify qualifications for student trustees and the consequences of becoming disqualified;

“(d) govern the number of student trustees who may sit on a board;

“(e) govern student trustees’ terms of office;

“(f) authorize boards to reimburse student trustees for all or part of the out-of-pocket expenses reasonably

incurred in connection with carrying out their responsibilities, subject to such limitations or conditions as may be specified in the regulation;

“(g) provide for transitional matters that, in the minister’s opinion, are necessary or desirable in connection with the implementation of section 6 of the Education Statute Law Amendment Act (Student Performance), 2006.

“Same

“(10) Without limiting the generality of subsection (1), a regulation under that subsection dealing with the honorarium described in subsection (8) may,

“(a) specify a method for calculating the amount of the honorarium;

“(b) specify conditions for the purposes of subsection (8);

“(c) provide that the honorarium for a student trustee who serves two or more terms shall be multiplied by the number of terms served or increased in some other way;

“(d) relate the amount of the honorarium to the honoraria received by members of the board;

“(e) govern the manner and timing of payment of the honorarium;

“(f) provide for the payment of the honorarium to a third party on the former student trustee’s behalf;

“(g) prescribe classes of student trustees or former student trustees and treat the members of different classes differently.

“Same

“(11) Without limiting the generality of clause (9)(a), a regulation under subsection (1) may provide for and govern,

“(a) student trustee elections at different times in the school year; and

“(b) by-elections to fill vacancies.

“Same

“(12) In a regulation under subsection (1), the minister may provide for any matter by authorizing a board to develop and implement a policy with respect to the matter, and may require that the policy comply with policies and guidelines established under paragraph 3.5 of subsection 8(1).”

1640

The motion substitutes the word “honorarium” for “scholarship” where it appears in this section. You may recall that we heard some stakeholder comment on that. The motion also clarifies that regulations could govern the application and the timing of payment of that honorarium on behalf of the student trustee.

The new section on student trustees in Bill 78 gives the minister the authority to establish regulations authorizing boards to develop and implement a specific policy regarding student trustees, and may require boards to comply with guidelines established by the minister, pursuant to the minister’s general powers under section 8 of the Education Act. As that provision under the general powers section refers to both policies and guidelines, the word “policies” is being added to this section by this motion.

That’s it.

The Chair: Thank you, Mr. McMeekin. The floor is open for questions and comments.

Mr. Marchese: I support this, but have two questions. I suspect the kind of honorarium the government might be contemplating is not going to break the bank or break the backs of school boards, but does the government contemplate giving money for any extra remuneration that might be going to the trustees, given that so many boards are strapped for cash? That’s my first question.

Mr. McMeekin: To the student trustees?

Mr. Marchese: This is going to cost money to boards. We don’t know how much. It may not break the bank, but is the government contemplating giving some extra money that this might entail to boards directly, or will the boards have to find money from whatever sources they’ve got?

Ms. Margot Trevelyan: This is being discussed as part of the grants for student needs process.

The Chair: Could I ask staff to identify themselves just before they begin to speak, please?

Ms. Trevelyan: I’m sorry. Margot Trevelyan at the ministry, director of governance.

Mr. Marchese: So Margot, you said you are discussing—

Ms. Trevelyan: The ministry is discussing the financing of boards as part of the grants process.

Mr. Marchese: On page 2, (10)(d) says “relate the amount of the honorarium to the honoraria received by members of the board.” Can someone explain what that means in terms of how the honorarium is going to be determined?

Ms. Trevelyan: Yes. It says it “may” be determined in that way. The way it will be determined will be established in the regulation, which is still under consultation, but the bill says that, yes, it might be connected with the trustee honorarium. For example, it could be a percentage of what the trustees get or the average or something like that, or it could be something that’s totally unrelated to what the trustees receive as—

Mr. Marchese: Would not (a) have covered that, where it says, “specify a method for calculating the amount of the honorarium”?

Ms. Trevelyan: I don’t know. I can just give you the policy directive. You’d have to ask the lawyers about that.

Mr. Riley: I think it’s just put in for additional specificity, that it might be done by way of a reference rather than specifying it separately.

Mr. Marchese: Not a problem. I think it’s a good thing. That’s fine. Thank you.

The Chair: Thank you. Are there any further questions or comments?

Mr. Klees: Under section 8, what was left out here by way of this amendment is the original reference to the fact that the scholarship, as it was called then, would be paid on completion of his or her term of office. So that no longer appears here. Could you explain the reason for that?

Mr. McMeekin: It’s implied. There was no intent to exclude that. The intent was to clarify the very real

possibility that not all students will go on to post-secondary education.

Mr. Marchese: I think that was the idea.

Ms. Trevelyan: May I add to that?

Mr. McMeekin: Please.

Ms. Trevelyan: The bill says that how the honorarium will be specified will be done in regulation, so that does leave open the possibility of having one of the specifications be a scholarship for attending a university. So the regulation could say, for example, and it has yet to be established, that a student would have to provide one of the following: show acceptance to a post-secondary university, show a business plan for starting a new business—that kind of thing. The word “honorarium” is just used to be more inclusive.

Mr. Klees: Okay. I understand that.

With regard to when it's to be paid, the original intent was that it would be paid on completion of the term. Are you providing some flexibility here? Is it the intent that if someone doesn't complete a term, they would still get an honorarium calculated based on the formula?

Ms. Trevelyan: It will be established in the regulation, but the proposals that have been made to us consistently by the trustee associations and the students have been that if a student has to vacate their seat for whatever reason, their honorarium, whether it's in the form of a scholarship or some other form, would be prorated.

Mr. Klees: With regard to (10)(f), it refers to payment being made “to a third party on the former student trustee's behalf....” Could you explain that, and under what circumstances that might happen?

Ms. Trevelyan: An example of that would be, if it were in the form of a scholarship, the money would perhaps go to a university or a college.

Mr. Klees: And “(g) prescribe classes of student trustees or former student trustees and treat the members of different classes differently.” What do you have in mind there?

Mr. Riley: I think that is just added so that we are sure we have the ability to perhaps make a distinction among former student trustees who proceed to a university setting, others who may go to a college setting, and others who may proceed to some other form of activity or endeavour after the completion of their term. It allows flexibility.

Mr. Klees: I certainly support this amendment.

The Chair: If there are no further questions, comments, issues for debate, we'll proceed to the vote. All those in favour of government motion 5 on section 6? All those opposed? I declare that motion carried.

We now proceed to the vote on section 6. Shall section 6, as amended, carry? Any opposed? I declare that section 6, as amended, has carried.

May I now take it as the will of the committee to consider sections 7 to 9 inclusive, seeing as no amendments or proposed items have been received so far? Yes. We'll move now to consideration of sections 7, 8 and 9 inclusive. All those in favour? All those opposed? I declare those sections carried.

I now proceed to section 10. Government motion 6: a government member?

Mr. McMeekin: Mr. Chair, let me just say for the record that I think you're doing a wonderful job there. You're keeping us right on track. I don't know how you do it. Even those of us who have studied this inside out are having trouble following all the specific numbers, and you just seem to keep us so much on track. So thank you for that. That's probably the last nice thing I'll say about anybody today.

I move that section 10 of the bill be struck out and the following substituted:

“10. Section 170.1 of the act is repealed and the following substituted:

“Class size

“Regulations

“170.1(1) The Lieutenant Governor in Council may make regulations,

“(a) governing class size in schools of a board;

“(b) establishing the methods to be used by a board in determining class size for the purposes of this section;

“(c) requiring boards to,

“(i) prepare reports and plans containing the specified information relating to class size,

“(ii) make the reports and plans available to the public in the specified manner, and

“(iii) submit the reports and plans required to the minister in the specified manner;

“(d) defining terms used in this section for the purposes of a regulation made under this section.

“General or particular

“(2) A regulation made under subsection (1) may be general or particular.

“Board duties

“(3) Every board shall ensure that class size in its schools conforms to the requirements set out in the regulations made under clause (1)(a).

“Transition

“(4) A resolution or part of a resolution passed under subsection (4) of this section as it read before the coming into force of section 10 of the Education Statute Law Amendment Act (Student Performance), 2006 has no effect with respect to any school year after the 2005-2006 school year.”

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Simply put, this motion would eliminate the board's ability to pass any sort of resolution permitting them to exceed the prescribed class sizes.

The Chair: Any questions, comments or issues for debate or consideration?

Mr. Marchese: If the parliamentary assistant or some staff could speak to “transition”: What does it mean?

The Chair: The floor is open for reply.

Mr. McMeekin: What's the question?

Mr. Marchese: Page 2: the word “transition.”

Ms. Wynne: When there's a new law coming into effect, Mr. Marchese, there need to be transitional sections while the school boards switch to the new regime.

That's what this is about. It's after the 2005-06 school year, right?

Mr. Marchese: So on the matter of class size, it says the following: "A resolution or part of a resolution passed under subsection (4) of this section as it read before the coming into force of section 10 ... has no effect with respect to any school year after the 2005"—not before, but after. It's just not clear to me.

The Chair: Ministry staff.

Mr. Abols: Perhaps I could assist with this. There's a current regulation that governs board resolutions on class size. In that regulation, which will of course be repealed once we repeal these provisions in the act, there's a possibility of boards passing resolutions that apply to more than two school years. So it really would not be appropriate to have a resolution that applies to 2006-07 which may be in conflict to the new regulations governing class size. This provision basically just says, if you have a resolution that applies to 2006-07, it's in effect of no force. I mean, 2005-06 is sort of academic; the school year's going to be over in a matter of weeks. This really deals with 2006-07.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 6, section 10? All those opposed? I declare that motion carried.

Shall section 10, as amended, carry? All those in—

Mr. Marchese: Chair, on that.

The Chair: Yes, Mr. Marchese.

Mr. Marchese: I realize I should be speaking to the section now as we're doing it. Otherwise, I will have to include all of my comments at the end.

The Chair: The floor is yours, sir.

Mr. Marchese: I had a concern around this, which I raised in committee. The question I asked of the deputy minister was, are class sizes going to be determined by grade, by division, by school, by board or by whatever method will provide us with a clear picture of what's going on? My sense is that the government is obviously going to create the method that will be most flattering or most propitious for them, so I was concerned about how they're going to determine class size. Actually, it's going to be left to regulation; we won't have a clue until that time comes. I was concerned about the fact that they don't mention any caps in this section, that they talk about maximum class size, which isn't defined.

I don't know where the government is going with this. I know they obviously have concerns around what the caps have caused school boards, in terms of consequences for some school boards around space. I don't know why they haven't talked about caps in the bill. If it's something they're proud of, they should include it or at least mention it or at least talk about caps in this section, and there's no mention of it. So I don't know what the intent of all that is.

I often hear the Premier and the former minister talk about caps and talk about reduction of class sizes, and they use it interchangeably. I know that the Premier understands the difference, because his wife is a teacher

or because he has taken an interest in education, but we all know there is a difference between capping and reduction of class sizes.

I have concerns around what the government is trying to do with this whole section around class size, and I'm concerned about how they're going to define it when the time comes for regulations to deal with it. I wanted to express my concern around this whole section and I wanted to do it now.

The Chair: Are there any further questions or comments on section 10 before the vote? Seeing none, we will proceed.

Shall section 10, as amended, carry? All those in favour? All those opposed? I declare section 10 to have carried.

May I take it the will of the committee that we consider sections 11 to 17 en bloc? If there's any comment on individual sections, that is also welcome at this time. Is that agreeable, Mr. Marchese?

Mr. Marchese: I beg your pardon? I didn't—

The Chair: May I take it the will of the committee that we consider sections 11 to 17 en bloc, seeing as no amendments, proposals or items have come forward?

Mr. Marchese: Yes.

The Chair: Seeing no objection to that, may I ask for consideration of: Shall sections 11 to 17, inclusive, carry? All those in favour? All those opposed? I declare sections 11 to 17, inclusive, to have carried.

We'll now move to consideration of a new section, 17.1, also a government motion, page 7.

Mr. McMeekin: I move that the bill be amended by adding the following section:

"17.1 Subsection 208.1(3) of the act is amended by striking out 'pupil representatives' and substituting 'student trustees.'"

That replaces reference to student representatives, assuring consistency of language. That's all it does.

The Chair: Any further questions, comments, debate or issues for consideration?

Seeing none, shall section 17.1, a new section just proposed by the government under motion 7, carry? All those in favour? All those opposed? I declare that new section, 17.1, to have carried.

Section 18, for which we have received no amendments or proposals to date: If there is no further comment on that section, we can proceed to the vote. Fine.

Shall section 18 carry? All those in favour? All those opposed? I declare section 18 to have carried.

We now move to section 19, NDP motion 8. The NDP has the floor.

Mr. Marchese: I move that clause 230(a) of the Education Act, as set out in section 19 of the bill, be amended by striking out "section 11.1 or 170.1" and substituting "section 170.1."

The Chair: Are there any further comments, questions or debate from any other side? Seeing none, we'll proceed to the vote.

All those in favour of NDP motion 8 for section 19? All those in favour? Mr. Marchese, I respectfully ask, are you in favour of your own motion?

Mr. Marchese: Yes, since I moved it.

The Chair: All those in favour of NDP motion 8? All those opposed? I declare that motion to have been lost.

We'll now move to the next item, PC notice 8.1.

Ms. Wynne: Mr. Chair, I believe that's the same motion.

The Chair: Thank you. That's also out of order. Shall section 19—

Mr. Klees: It's not out of order.

1700

The Chair: Both: duplicate and out of order.

We'll now proceed to consideration of section 19. Those in favour of section 19? Any opposed? Section 19 has been carried.

May I take it the will of the committee to consider sections 20 to 33 en bloc for a whole consideration? If there are any comments on individual sections, that is also welcome at this time. May we consider sections 20 to 33 en bloc?

Mr. Marchese: Sorry.

The Chair: Yes, Mr. Marchese

Mr. Marchese: On 22—sorry. You've got to pay attention here. It's so good to have staff.

The Chair: Fair enough.

Mr. Marchese: A lot of staff.

The Chair: I'll intervene there, Mr. Marchese. I'll give you the floor for section 22.

May we then consider sections 20 to 21 en bloc? Seeing as that's the will of the committee, all those in favour of sections 20 to 21? All opposed? Sections 20 and 21 carry.

Mr. Marchese, you have the floor for section 22.

Mr. Marchese: This is the personal liability of members' boards, which I wanted to speak against. This is something that has concerned me in the hearings. It is an issue that the Tories introduced, in terms of personal liability. The government claims that they have a new relationship of respect with teachers and trustees. This particular motion undermines that relationship.

So I wanted to speak against this section as something that does not respect trustees or their decision-making powers. We MPPs are not liable for the same kind of actions. City councillors are not liable in the same way, that I'm aware of—maybe a city councillor might speak to that—but trustees are personally liable, or liable as a board. I wanted to simply say that in that section I was a bit offended that the Liberals have kept it rather than dropping it.

The Chair: Ms. Wynne.

Ms. Wynne: As I said in one of the sessions with a delegate, I did ask this question of legal counsel, and my understanding, Mr. Marchese, is that the bill, as it stands now, would leave school trustees exactly as liable as city councillors. That was the question I asked of legal, and that was the advice that I've been given. So it's the same personal liability as municipal councillors. As a former trustee, I was very concerned that school trustees not be more liable than city councillors.

Mr. Marchese: Oh, I see. Just in response to that, the fact that city councillors are liable, I didn't know that, but the fact that they are equally liable is something that I object to, because so much of what city councillors do depends on provincial obligations or transfers or downloading that has been imposed on city councillors.

Interjection.

Mr. Marchese: Yes, I know, but the Liberals have kept those downloads onto the backs of the municipalities. For them to be held liable for about a couple of billion dollars worth of provincial responsibilities that they have maintained on city councillors and the fact that we're making trustees liable for so much of what ought to be provincially dealt with by adequate funds, to simply say to boards, "Unless you comply by making sure that you have a balanced budget and unless you cut necessary programs"—because that's what it implies, as the Peel Catholic has done—to force them to do that when their obligation is to serve their boards—students, teachers and parents—where some trustees argue that they cannot balance the budget because to do so would be to cut essential programs to those students, when they decide to do that, if they decide to do that, they're liable.

What we're saying to trustees is "Too bad, so sad. You've got to balance your books no matter what. We may not be giving you enough money, but that's not our problem. You'll simply have to do your duty to obey the provincial interest."

It surprises me that we would defend that. We wouldn't have defended that as trustees when we were at the Toronto board. I certainly would never have defended such a thing. I think it's wrong. I think trustees have a duty to be able to say, "We will not make cuts that involve programs, because we do not get enough money from the province." I find this section offensive. I found it offensive when the Tories did it as a way of forcing boards and trustees to comply, and I find it offensive while the Liberals are doing it, for the record.

The Chair: Thank you, Mr. Marchese. Are there any further questions, comments, issues for consideration? I'll move to the vote, then.

All those in favour of section 22? Any opposed? I declare section 22 to have carried.

May I take it as the will of the committee that we consider for block consideration sections 23 to 33 inclusive? Any comments on individual sections are now welcome at this time. I'm taking that as a yes. We'll proceed to the vote.

Shall sections 23 to 33, en bloc, carry? All those in favour? All opposed? Those sections so named have now carried.

I now proceed to section 34, government motion 9.

Mr. McMeekin: I move that section 34 of the bill be amended by adding the following subsections:

"(1.1) Clause 266(2)(a) of the act is amended by striking out 'subsections (2.1), (3) and (5)'" and substituting 'subsections (2.1), (3), (5), (5.1), (5.2) and (5.3).

“(1.2) Clause 266(2)(b) of the act is amended by striking out ‘subsection (5)’ and substituting ‘subsections (5), (5.1), (5.2) and (5.3).’”

Subsection 266(2) on privilege of pupil records references further subsections in the provision. The proposed amendment includes proposed new subsections in cross-references. The proposed motion would provide consistency with the proposed new provision on pupil records.

The Chair: Questions and comments?

Mr. Marchese: Just to state an objection, it says here, “Exception:

“(5.3) The designated person may refuse to hold a hearing if,

“(a) in his or her opinion, the request is trivial, frivolous or vexatious....”

I’m concerned about that because the board controls the entire process. At the very least, the hearing should be compulsory to guarantee fairness. The request might still be refused, but the parents would still have a right to be heard. This presents a problem inasmuch as someone can decide that in his or her opinion, the request is trivial, frivolous or vexatious. I consider that to be a problem. Those of us who have been trustees and active parents know what this implies in terms of being a pest, often, sometimes to teachers, sometimes to principals, sometimes trustees. But many of these people are very dedicated and they spend a great deal of energy, sometimes, to seek out justice or to seek out what, in their mind, is the right thing. This simply says that that hearing may or may not happen. I think it’s a mistake, by the way. I wanted to state it for the record.

The Chair: Any further comments? Seeing none, we’ll proceed to the vote. All those in favour of government motion 9, section 34? All opposed? I declare that motion to have carried.

Shall section 34, as amended, carry? All those in favour? All those opposed? Section 34 is carried.

May I now take it as the will of the committee that we consider sections 35 and 36 together? Are there any comments, please? Seeing none, we’ll now consider those sections.

Shall sections 35 and 36 carry? All those in favour? All opposed? I declare sections 35 and 36 to have carried.

We’ll now move to government motion 10, section 37.

Ms. Wynne: I move that section 267 of the Education Act, as set out in section 37 of the bill, be amended by adding the following subsection:

“Same

“(5) For greater certainty, a teacher does not have more than one new teaching period.”

In the bill as it stands, in the new teacher induction program the new teaching period is designated as potentially two years, and what this says is that there can’t be a series of two new teaching periods, so that can’t be four years.

1710

The Chair: Further comments, questions on any side? Seeing none, we’ll proceed to the vote.

Those in favour of government motion 10 of section 37? All opposed? I declare that motion to have carried.

Shall section 37, as amended, carry? All in favour? All opposed? I declare that section to have carried.

May I ask now for block consideration of sections 38 to 40, inclusive? Any comments on any of those sections are welcome now.

Seeing none, may I ask: Shall sections 38, 39 and 40 carry? All in favour? All opposed? Sections 38 to 40 carry.

We now move to section 41: government motion 11.

Ms. Wynne: I move that section 277.29 of the Education Act, as set out in section 41 of the bill, be amended by adding the following subsection:

“Extension of time

“(6) If the board extends the teacher’s new teaching period in accordance with the regulations, the extension also applies to the period of 120 school days within which an appraisal mentioned in paragraphs 1, 2 or 3, as the case may be, of subsection (2) must be scheduled.”

What the bill currently proposes is that if a new teacher doesn’t successfully complete the new teacher induction program in the first 12-month period, then the teacher has to be scheduled for additional appraisals and all of those appraisals have to be completed within the 24-month new teaching period, which I just referenced in my last comments. But what this amendment says is that an additional 120 days as an extension could be provided if there were some reason for that—if the teacher was going to a new school and needed another opportunity to complete that new teacher induction program.

The Chair: Any further questions, comments on government motion 11? Seeing none, we’ll proceed to the vote.

All those in favour of government motion 11 of section 41? All in favour? All opposed? I declare that motion to have carried.

Shall section 41, as amended, carry? All in favour? All opposed? That section—

Mr. Marchese: Mr. Chair, I know you like to go fast. I’m trying to desperately follow the speed of the process here and I’m trying to find 38 and 39 on all these pages. I realize I’ve got to move fast, right? So I wanted to say at some point here—and I forget where this motion is, but 38, 39, 40—we’re getting there to the principal, 41. Where are you now? Sorry.

The Chair: We are now considering section 41, government motion 11. The clerk will actually give you the motion if you don’t have it already, and the floor is yours.

Mr. Marchese: Okay. I wanted to simply say here that the Ontario College of Teachers—yeah, I’m there now. I just needed to flip the pages.

Since the college of teachers used to oversee the new-teacher test, why does the college not oversee this new teacher induction process? That’s the question I had of the government.

Ms. Wynne: You know what? I don’t know if you’re asking a legal question or a policy question.

Mr. Marchese: It's a political one, yes.

Ms. Wynne: Okay. What I can tell you, Mr. Marchese, is that there has been a long and full process with the federations at a working table, with boards, with all the people involved, with the principals and the teachers, developing the parameters of the new teacher induction program. So this is the model that was struck by that working table. If there's more to that, then I'll ask staff to come and fill it in, but that's the model that has been settled upon.

Mr. Marchese: I just find it a bit strange. The college of teachers is normally this body that would be doing this—they had control of the so-called teacher test, and this new teacher induction program is something that I would think falls under their jurisdiction. Why doesn't it fall under them, is a question that boggles. What you're saying is, there was a group that—

Ms. Wynne: You're questioning the role of the principal—

Mr. Marchese: I'm questioning why the ministry's doing this and not the college of teachers.

Ms. Wynne: Why the ministry's doing it? Okay. I'm going to ask staff to answer that question.

Ms. Scarff: Elisabeth Scarff from legal. Just as a clarification, the college actually did not administer or control the qualifying test. It was the minister. It was an outside body that did it on behalf of the minister. The college just recorded or noted if the test was successfully completed. The induction program is being administered by the boards and employers themselves.

Mr. Marchese: Is there a reason why the College of Teachers wouldn't be doing this?

Ms. Scarff: I think that's more a policy question but I think the point is, because it's part of the induction of a new teacher in their new employment circumstance, it is the employer, particularly the principals, who would have the day-to-day or routine, ongoing—

Ms. Wynne: I obviously didn't do it very well, but that's the point I was trying to make, Mr. Marchese, that the discussion that's gone on with the sector about how teachers need to be supported, especially in that first year when they come into the system, the policy decision is that they're best supported by the system that they're working in.

Mr. Marchese: Not a problem. Thank you.

Ms. Wynne: I would think you would agree with that.

Mr. Marchese: Yes.

Ms. Wynne: Yes. Thank you.

The Chair: Thank you. Are there any further questions?

Mr. Marchese: Yes. On this section still, I remember raising a number of times in the hearings that principals are the ones who oversee the induction programs of teachers, and there's nothing in this section that talks about who does the induction process for new principals, who does the oversight for principals. Why wouldn't the government deem it fit to, in this section, talk about having principals whose appraisal would be done by

superintendents? Why isn't it stated in the bill? Why wouldn't you do that?

Ms. Wynne: What I can tell you, Mr. Marchese, is that there is a discussion with the principals around the review of their performance. Are you asking about initial training? I mean, there already are qualifying courses that principals have to take.

Mr. Marchese: I understand, but teachers go through the college like everybody else, and then they have an induction program. If a new principal gets into a classroom, there is no induction program for new principals. Do you think that's not something they need?

Ms. Wynne: That's not how the process has evolved. I think the issue was that, with the new teachers, we were looking for a way of retaining and supporting new teachers in the system. Principals are at a completely different stage in their career; they've gone through a different process. The issue of review of principals is one that is under consideration, but the issue of induction has to do with the new teachers.

Mr. Marchese: I just want, for the record, to simply say that I think it's a mistake for the government not to have an induction process for new principals. The fact that they've been around doesn't mean that they know how to be good principals. In the same way that we're getting rid of a teacher qualifying test with induction programs to help teachers, we should have an induction process for new principals to help principals. A peer review, in my view, is simply not the right way to go, which is I think the kind of discussions you might be having with principals. I think principals should be appraised by superintendents and not by a peer body, and it should be stated in this bill. I'm disappointed it's not here.

The Chair: Thank you. Are there any further questions and comments on that?

Mr. Klees: With regard to the consultations that took place with the sector relating to this, was the college of teachers consulted?

The Chair: The question is before the floor.

Ms. Wynne: Was the college consulted on—sorry?

Mr. Klees: You mentioned that there was a broad consultation with the sector relating to this teacher induction program. Was the college consulted?

Ms. Wynne: Are you asking whether the college was on the working table? Yes, the college was part of that discussion.

The Chair: If there's no further discussion, I remind the committee we've already carried motion 11. We now proceed to the vote.

Shall section 41, as amended, carry? All those in favour? All opposed? I declare section 41, as amended, to have carried.

At a slower pace, I ask once again if it be the will of the committee that sections 42 to 49, inclusive, be considered for block vote. Any comments on any of those sections are now welcome at this time: 42 to 49.

May we proceed to that, Mr. Marchese?

1720

Mr. Marchese: Yes, go ahead.

The Chair: I will now ask for a vote: Shall sections 42 to 49, inclusive, for which we have received no amendments or items or proposals, carry? All those in favour? All those opposed? I declare those sections to have carried.

We'll now proceed to consideration of section 50, a PC motion, 11.1.

Mr. Klees: My intention was to invite the committee to strike down this entire section but I know that wouldn't happen, unfortunately. So I'll move this motion.

I move that section 50 of the bill be struck out and the following substituted:

"50. Section 4 of the Ontario College of Teachers Act, 1996 is amended by adding the following subsection:

"Same

"(2.1) At least two members of the council shall be school administrators."

The Chair: Questions or comments? Seeing none, we'll proceed to the vote on PC motion 11.1 for section 50. All those in favour? All those opposed? I declare that motion to have been lost.

We proceed to the next item, which is a PC notice, 11.2. You have the floor, Mr. Klees.

Mr. Klees: I think I have made it very clear, and there have been many submissions in the course of committee hearings related to this section of the bill, that I believe, along with many stakeholders—we had very broad submissions, four former Ministers of Education and two former registrars. There were many concerns expressed about what the government is doing, what this section represents. It strips the Ontario College of Teachers of its independence. It gives absolute control to the teacher unions with regard to the functioning of the college of teachers. It was never the intention that the college of teachers be controlled by teacher unions. There was always the intention that there be public appointees that would be meaningful to represent the public interest.

This entire section I believe reveals, first of all, that this government is prepared to turn its back on the need for an independent regulatory body to oversee this important profession and is clearly a follow-through on an election promise that I believe was ill-conceived in the first place. The fact that the government has gone to the extent of making additional appointments to the council of so-called classroom teachers—and through submissions over the course of the hearings, we have heard what that definition represents.

We have heard submissions from former registrars who spoke very openly about caucusing that takes place prior to council meetings, which certainly was never the intent and should not be how this council functions. Nevertheless, the government chose to acquiesce to the demands of the teachers' unions to change the structure of this council. Concerned, no doubt, about the perception that the public will have about this structure, they then go to the extent of including in this section a public interest committee.

What is confusing even the teachers' unions is why the government and why the minister feel it necessary to put in place this public interest committee. There are public appointments that are going to still be made to the council. If, in fact, there is not a concern that those classroom teachers would control this council, then surely the public appointees to the council would ensure that there isn't a conflict and would ensure that the public interest is served.

It's very obvious that even the minister and the government don't trust that process, and so they overlay the regulatory council with this additional bureaucratic structure that now is going to be of some other ilk of public appointment, who then have the responsibility to ensure that the public interest is served. On the one hand, the government denies that there is any control on the part of a specific group, namely, the teachers' unions, here; on the other hand, they don't trust themselves even in that and so they put in place this public interest committee.

I have to say, on behalf of who I believe is the vast majority of Ontarians who would disagree and do disagree with the government's initiative here on this bill, that we are strongly opposed to it. I believe the government will regret their actions on this. I think it's bad public policy. I don't believe it will serve the public interest. We, of course, will be voting against this section. I believe the government will, as I said before, live to regret the stripping of the independence of the college of teachers through this section.

The Chair: Further questions?

Mr. McMeekin: Just a comment in response to my friend opposite, who I think is insisting on too strict a paradox. On the one hand, he talks about not wanting to see a majority of the members, the "working teachers," and makes that point rather eloquently, and then decides to also critique a provision which he then went on to explain was, in his opinion, put in place to counter the very earlier argument he made. So it just strikes me as passing strange.

I suppose it would be appropriate to make a couple of other passing references: first, to the oath of office that's required. By the way, the research has shown that many of the regulatory bodies require it, including the Queen's Park oath of office to protect the public interest.

I think it also needs to be said that there is a certain sense in some quarters that we're in a transition period from the very poisoned atmosphere that was present, specifically with the previous government, and that in the context of that transition, this is something that we feel, in addition to precluding certain officials who may have another interest from standing for office, the oath and the public interest research committee, that this just makes a lot of sense, particularly as we try to get through the bumps that have been put there historically.

Mr. Klees makes reference to the vast majority of Ontarians supporting his position. I would dispute that. I think the vast majority of Ontarians, particularly those who monitor and take a real interest in public education, have got a lot more trust for teachers than they generally

do governments. That has been my experience in my community and I think of some of the stakeholders here. But I can tell you that the vast majority of Ontarians made it very clear in the last provincial election that they sure as sure as heck didn't like what the previous government was doing to public education in Ontario. So if we want to talk about the vast majority, I think we need to put that on the record as well.

1730

The Chair: Are there any further questions and comments on this PC notice 11.2?

Mr. Marchese: I just wanted to defend the teachers in this regard—

Mr. McMeekin: Good for you.

Mr. Marchese:—rather than the government. I voted for the college of teachers a long time ago, just for the purposes of those Liberals who don't know that. I'm not a big fan of the college of teachers, I have to admit. They have a useful role, I will grant, inasmuch as they administer or supervise the oath. They obviously give the teaching certificate and/or take it away. They're a disciplinary body for those teachers who obviously are a problem for a variety of reasons, either because it's a competency issue or a sexual abuse issue—whatever it is. In this regard, they play a useful role. I think it's a huge administration to do these things that I don't believe we need. On the other hand, one reason to have it is so that if a teacher does get fired, for whatever reason, they're not able to move around from one board to the other undetected. The college of teachers would simply be able to provide that role. In that regard, they're useful. But other than that, I've got to tell you that this huge bureaucracy is sometimes, in my view, a whole waste of pecunia.

But I wanted to defend the fact that teachers were attacked by a number of deputants and they were referred to as unions, so they were synonymous: If you're a teacher, you're a union. It was unbelievable to me that someone could make that claim, particularly coming from those who were formerly teachers. Teachers go there with the intent to serve, with the objectives that are set out for the college of teachers. It's inconceivable to me that a teacher is going to go there and not protect the interest of the community. It's inconceivable that a teacher is going to go there and say, "Ah, this teacher is incompetent, but because he or she is a teacher, I'm going to protect them." I've never heard of a case, anywhere, where a teacher is going to protect an incompetent teacher, where it affects their own reputation and it affects the reputation of teachers in general.

I just don't understand how the Tories and others could make these claims, these incredible claims, notwithstanding that I have no love for the college of teachers.

The attack on teachers as being unions is just so totally wrong and indefensible that I wanted to put that on the record. I believe the teachers who go there will simply represent students, will represent teachers, will represent parents fairly, and then, when there's abuse, my feeling is they will all act in the best interests of students.

The Chair: Mr. McMeekin.

Mr. McMeekin: For the record, I agree with what Mr. Marchese said.

The Chair: Mr. Klees?

Mr. Klees: I would like to respond to Mr. McMeekin's comments and also Mr. Marchese's.

I find it passing strange that because teachers are referred to as union members that somehow is an attack on teachers.

Mr. Marchese: What do you mean—it wasn't said politely and nicely? Is that what you're thinking?

Mr. Klees: It was never said in any other way, Mr. Marchese. The reality is—let's put it this way—that most teachers in this province are in fact union members.

Mr. Marchese: But they don't go there to represent the union.

Mr. McMeekin: That was something—

Mr. Klees: Chair, I respected Mr. McMeekin when he was making a statement. I respected Mr. Marchese. I would ask the same from them.

The Chair: The Chair agrees. The floor is Mr. Klees's, please.

Mr. Marchese: Go ahead, Frank.

Mr. McMeekin: Just be straight with us, Frank.

Mr. Klees: I expected more of you, Mr. McMeekin.

The point I was making is that to refer to teachers as union members was not intended, and isn't intended, by anyone, to be disparaging. It's simply a reality.

Over the course of the hearings we have heard from people of all political stripes, former teachers, current teachers, who happen to have a different opinion from Mr. McMeekin and his Liberal Party and Mr. Marchese. It's interesting how, in the discussions around these issues, anyone who has a different opinion is somehow an underclass in this province and somehow doesn't have the authority or the right to express their opinion. I find that very interesting and, in fact, to some people it's intimidating.

The truth is that the former Liberal education minister made the same statement. Sean Conway, very publicly, on a TVO program said the following: "The college of teachers already has a majority of the profession on the council. The difference is that this omnibus bill now says we're going to add five more from the unions." Shame on Mr. Conway, isn't it, that he would refer to these people as union members, but he does: "Add five more from the unions, which will now give a majority of the unions on the council, which is a completely different concept." Interesting.

Bette Stephenson, on the same program, made this statement: "Far too many under the influence of the federation of teachers." Former NDP minister—Mr. Marchese, do you remember Dave Cooke?

Mr. Marchese: I do know him very well

Mr. Klees: Interesting. Here's what Dave Cooke had to say on that program: "There are discipline hearings. When a discipline hearing happens, right now a majority of the federation—there is not a majority of the federation on the discipline panel but there's a majority of

teachers. It might be a director and so forth. At the same panel, there will be a lawyer hired by the federation to protect the teacher. So now you're going to have a majority of people from the federation passing judgment on a discipline hearing that their federation is fighting. It doesn't make sense." That was the NDP education minister. Disparaging comments towards teachers and union members? I don't think so. He expressed his professional opinion in the interest of ensuring that there is independence and objectivity at the college of teachers.

Sean Conway: "Well, I'm a former Minister of Education, and I believe very strongly, as the son and grandson of teachers, that it is a professional calling and I expect professionals to behave professionally, particularly when it concerns the public interest. I expect them to have strong organizations to protect their occupational interests, but the public interest is not necessarily the same thing." The point that Sean Conway, the former Liberal education minister, is making is that there is a difference between looking after the professional interests of teachers and looking after the public interest in the broader context. Sean Conway, the former Liberal Minister of Education, strongly opposes what this government is doing. The former NDP Minister of Education, Dave Cooke, strongly opposes what this government is doing, and we strongly oppose what this government is doing.

1740

The Chair: If there be no further questions, comments on PC notice 11.2, I inform the committee that that notice is, in fact, out of order, so we'll not be voting on it.

We'll now proceed to consideration of section 50. Shall section 50 carry? All those in favour? All those opposed? I declare section 50 to have carried.

We will now consider section 51, for which no amendments or proposals have so far been received. If there are no comments on it, we'll proceed to the vote. Shall section 51 carry? All those in favour? All those opposed? I declare section 51 to have carried.

We'll now move to consideration of section 52, government motion 12, Mr. McMeekin.

Mr. McMeekin: I move that subsection 52(1) of the bill be amended by striking out "six" and substituting "seven."

By way of a very quick explanation, there is a provision in regulation for a specific extension of one year. This just makes it all consistent with what had previously been put in place.

The Chair: Are there any comments, questions, considerations on that? No. We'll proceed to the vote. All those in favour of government motion 12? All opposed? Government motion 12 has carried.

Government motion 13, Mr. McMeekin.

Mr. McMeekin: I move that subsection 5(3) of the Ontario College of Teachers Act, 1996, as set out in subsection 52(2) of the bill, be amended by striking out "six" and substituting "seven."

Remarks: ditto the previous remarks.

The Chair: I will proceed to the vote. All those in favour of government motion 13? All those opposed? I declare government motion 13 of section 52 to have carried.

We now have the next item, PC notice 13.1. The floor is yours, Mr. Klees.

Mr. Klees: I withdraw.

The Chair: We'll now proceed to the consideration of section 52, as amended. All those in favour? All those opposed? I declare section 52, as amended, to have carried.

We have a proposal for a new section, 52.1, government motion 14.

Ms. Wynne: I believe that this motion may be out of order. Could we have a ruling on it?

The Chair: It is out of order, Ms. Wynne.

Ms. Wynne: Okay. We withdraw this motion.

The Chair: We'll now proceed to section 53, an NDP motion, which I respectfully remind this committee also is out of order, notice 15, but the floor is yours, Mr. Marchese.

Mr. Marchese: I want to get back to section 1, so I want to leave as much time as we can to get back to that section. I'll simply speak to section 17.1 as we get to it, and that will take care of my motion that's there.

The Chair: Do I take it that you have withdrawn?

Mr. Marchese: Withdrawn, yes.

The Chair: We'll proceed to the next item, which is PC notice 15.1. I respectfully remind the committee that's also out of order, but the floor is yours.

Mr. Klees: It's withdrawn.

The Chair: It's withdrawn. Shall section 53 carry? All those in favour?

Mr. Marchese: That's what I want to speak to.

The Chair: The floor is yours, Mr. Marchese.

Mr. Marchese: For the record, I want to say that I was offended by this particular establishment of a public interest committee. I'm so upset that I'll speak to it when we get to third reading; I'll speak to it wherever I go. I think this is an egregious waste of money. The government is somehow—I don't want to justify for them why they're doing it. It's incomprehensible to me.

This section is not needed. We don't need another oversight committee of the college of teachers; we simply don't. You're going to establish a committee of three or five well-paid individuals who are going to need staff to help them. To do what, is the question. They're going to oversee the oath, they're going to oversee whatever it is that the college of teachers is doing, and they're going to give them advice on God knows what; I don't know.

It simply says that the college of teachers is not to be trusted, that we're afraid of what the college of teachers might do. And I don't know what they would be afraid of. I don't know what these people are going to be doing. It's going to cost a whole lot of money. I hope the government will tell us how much these people are going to cost us.

The government is broke. They don't finance boards of education adequately. The Conservative funding formula is still in place. The Dufferin Catholic board proved to us—at least the investigative report proved—that we're short of money. How they can find money to have a new public interest committee to oversee a college of teachers is beyond me. I hope the government is going to find spokespeople to go and defend this special public interest committee, but I'm going to be attacking them from here until this government is in place, and the next government, if they're re-elected. So they'll be hearing from me.

The Chair: Any further questions and comments? Seeing none, we'll proceed to the vote. I remind the committee there were no amendments.

Mr. Marchese: Can we have a recorded vote on this one, please?

Ayes

Balkissoon, Leal, McMeekin, Ramal, Wynne.

Nays

Klees, Marchese.

The Chair: I declare section 53 to have carried.

May I take it as the will of the committee to consider sections 54, 55 and 56 en bloc for the vote? If there are any comments on any of those individual sections, those are welcome right now as well. We'll proceed to the vote.

Mr. Klees: Recorded vote.

Ayes

Balkissoon, Leal, McMeekin, Ramal, Wynne.

Nays

Klees.

The Chair: I declare sections 54, 55 and 56 inclusive to have carried.

We'll now proceed to a new section proposal, section 56.1, PC motion 15.2. I respectfully remind the committee that that notice is out of order, but the floor is yours, Mr. Klees.

Mr. Klees: I'll withdraw.

The Chair: Thank you, Mr. Klees.

Ms. Wynne.

Ms. Wynne: Mr. Chair, I have a motion, of which I have copies. It's an amendment to 57(7). I'm just wondering if this is the appropriate time to introduce it.

The Chair: Yes. Perhaps we'll consider the NDP and PC, and then we'll move to the government motion that you are now providing us with.

Mr. Marchese: I withdraw all of the amendments that I have put forth—because they're redundant now—so

that we don't have to repeat each in its time and can get to the other matters that have not been dealt with.

The Chair: That's for all the sections that are remaining?

Mr. Marchese: Yes, all of them.

The Chair: Thank you, Mr. Marchese.

Mr. Klees: Chair, in the interest of time, I will do the same.

The Chair: Thank you for that, Mr. Klees.

The floor is now open for government motion 16.2, section 57. The floor is the government's.

Mr. McMeekin: I move that subsection 57(7) of the bill be struck out and the following substituted:

"(7) Subsection 40(1) of the act is amended by adding the following paragraphs:

"14.1 prescribing additional duties of the public interest committee;

"14.2 requiring that a panel established to hear or review a matter relating to a principal or vice-principal must include a principal or vice-principal."

Paragraph 14.1 is not new; 14.2 is.

The Chair: We're deeming this motion government motion 16.2. Are there any further questions and comments on this motion? Seeing none, we'll proceed to the vote. All those in favour of government motion 16.2? All those opposed? I declare this to have carried.

With the withdrawal of NDP and PC motions for section 58, we'll proceed directly to the vote. All those in favour of section 58?

Interjection.

The Chair: I'm sorry. All those in favour of section 57, as amended? All opposed? I declare that carried.

We'll now consider section 58 with the withdrawal of motions. All those in favour of section 58? All those opposed? I declare section 58 to have carried.

House division bells were heard to ring.

The Chair: Seeing as we are now in the middle of a vote, I'll take direction from the committee. We can resume immediately after the vote, if that is the will of the committee.

Mr. Marchese: We just have to do the first section. So if we could get some answers to the questions I had asked with a quick comment, we might be able to end it before the vote.

Ms. Wynne: But can we move all these amendments? We've got four more amendments to section 59.

Mr. Ramal: Can we move them en bloc?

Mr. Marchese: Move them en bloc, please.

Mr. McMeekin: Motions 19 to 22 moved en bloc, Mr. Chair.

The Chair: Government motion 19 of section 59—and we're mindful of the vote time as well.

Mr. McMeekin: I move that subsections 59(2) and (3) of the bill be struck out and the following substituted:

"(2) Clauses 42(1)(c) and (d) of the act are repealed.

"(3) Subsections 42(2) and (3) of the act are repealed."

The Chair: All those in favour of government motion 19? All those opposed? I declare that motion to have carried.

Shall section 59, as amended, carry? Carried.

Government motion 20 is out of order. I respectfully request them to withdraw.

Mr. McMeekin: Okay.

The Chair: Shall section 60 carry? All those in favour? All those opposed? Section 60 is carried.

Block consideration of 61 to 64.

Mr. McMeekin: Carried.

The Chair: Any opposed? None. Carried.

Section 65: government motion 21.

Mr. McMeekin: I move that subsections 65(1), (2) and (3) of the bill be struck out and the following substituted:

"65. (1) Section 2 of The Upper Canada College Act, being chapter 373 of the Revised Statutes of Ontario, 1937, is amended by striking out 'seventeen' and substituting 'fifteen.'

"(2) Clause 3(1)(a) of the act is amended by striking out 'six' in the portion before subclause (i) and substituting 'four.'

"(3) Subclauses 3(1)(a)(ii) and (v) of the act are repealed."

We have brought agreement on all of that from the parties involved.

The Chair: Proceeding directly to the vote, all those in favour? All those opposed? I declare government motion 21 to have carried.

Shall section 65, as amended, carry? All those in favour? All opposed? Carried.

Shall section 66 carry? All those in favour? All opposed? Carried.

Section 67: government motion 22.

Mr. McMeekin: I move that subsection 67(2) of the bill be struck out and the following substituted:

"(2) Sections 2, 6, 16, 17.1, 37, 39 to 45, 47, 55 and 56 come into force on a day to be named by proclamation of the Lieutenant Governor."

The Chair: All those in favour of government motion 22? All opposed? That's carried.

Shall section 67, as amended, carry? All those in favour? All those opposed? Carried, as amended.

Shall section 68 carry? All in favour? Opposed? Carried.

We now move to the deferred item on section 1. Ministry staff, the floor is yours.

Ms. Fran Rowe: My name is Fran Rowe, and I'm counsel to the education ministry.

Mr. Don Young: Don Young, from the information management branch at the ministry.

Ms. Rowe: We have here four questions generally. I think I'll start with the most important one first of all, and that is whether the Information and Privacy Commissioner agrees with this.

We met with the assistant commissioner for privacy, Ken Anderson, and one of his staff on two different

occasions to come to these amendments. They were interested in making sure there was some tweaking that they felt was necessary to protect privacy. In particular, they didn't think that saying we would be able to collect and use information "reasonably necessary" for these purposes—they wanted to make sure it was—

Mr. Marchese: That wasn't my question; that was somebody else's. My question is, why are we doing this? What kind of information are you collecting? Is it on students? On teachers? How will this information be stored? Where will it be stored? To whom will it be made available? Will the private operators have access? Those kinds of questions were the questions I asked you. Do you have any sense of why we're doing this?

Mr. Young: Yes. We're doing this basically just to provide better information on which to make decisions at all levels. So we will be collecting information on students, teachers, courses, classes—that sort of thing. In essence, it's to allow us to better support allocation of resources in a sensible way, development and monitoring of policy initiatives as well as statistical research.

Mr. Marchese: Can I ask you, are boards collecting this kind of—

The Chair: Mr. Marchese, I'd just respectfully remind you that we now have four minutes, 18 seconds to the vote.

Mr. Marchese: Yes, I know. Can boards collect information now? Are they doing it now?

Mr. Young: Yes. In fact, the boards—

Mr. Marchese: So what's different from what you're doing and what they're doing?

Mr. Young: What we're doing is collecting information province-wide, and we're able to store that and provide longitudinal knowledge.

Mr. Marchese: Mr. Chair, we don't have enough time, but just for the record, I am very wary of this section, in the same way that I wanted to oppose section 4, which centralizes power in the ministries as it relates to special ed, as it relates to outcomes. In essence, the province is going to be able to control everything centrally; there's very little role for the boards. I wanted to oppose it before when we were doing it, and for the record, I want to say that I am opposing it now and will do so when we get to debate on the bill.

The Chair: Thank you. Government motion 1: All in favour? All opposed? I declare it carried.

Shall section 1, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 78, as amended, carry?

Interjections: Carried.

The Chair: Shall I report the bill to the House? Carried.

Thank you. Committee adjourned.

The committee adjourned at 1754.

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Official Report of Debates (Hansard)

Monday 29 May 2006

Journal des débats (Hansard)

Lundi 29 mai 2006

Standing committee on social policy

Transparent Drug System
for Patients Act, 2006

Comité permanent de la politique sociale

Loi de 2006 sur un régime
de médicaments transparent
pour les patients

Chair: Shafiq Qaadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 29 May 2006

Lundi 29 mai 2006

The committee met at 0902 in committee room 1.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to Queen's Park. Welcome to the standing committee on social policy. Before we start today, we're going to ask the government side to report to us about the subcommittee report.

Ms. Kathleen O. Wynne (Don Valley West): Your subcommittee met on Thursday, May 11, 2006, to consider the method of proceeding on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act, and recommends the following:

(1) That the committee meet in Toronto from 9 a.m. to 12 noon and from 3:30 p.m. (following question period) to 6 p.m. on May 29, 30 and June 5, 2006, for the purpose of holding public hearings;

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in English and French dailies, and certain French weeklies for one day, during the week of May 15, 2006, and that an advertisement also be placed on the OntParl channel and the Legislative Assembly website;

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Tuesday, May 23, 2006;

(4) That in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 6 p.m. on Tuesday, May 23, 2006;

(5) That the members of the subcommittee prioritize and return the list of request to appear by 12 noon on Wednesday, May 24, 2006;

(6) That groups and individuals be offered 10 minutes for their presentation. This time is to include questions from the committee;

(7) That the deadline for written submissions be 5 p.m. on Friday, June 2, 2006;

(8) That no summary of presentations be prepared by the research officer;

(9) That the committee meet for the purpose of clause-by-clause consideration on Tuesday, June 6, 2006;

(10) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any

preliminary arrangements necessary to facilitate the committee's proceedings.

I'd like to move that report, Mr. Chair.

The Vice-Chair: Is there any debate?

Mr. Ted Chudleigh (Halton): I wonder how many applicants there were to make presentations and how many are being accommodated.

The Vice-Chair: Three hundred and twenty-four applied.

Mr. Chudleigh: And how many are being accommodated?

The Vice-Chair: Ninety-nine.

Mr. Chudleigh: Does it not appear that these times are rather restricted and perhaps we should have more hearings as opposed to less?

The Vice-Chair: This number, I guess, was directed by the House.

Mr. Chudleigh: The other thing is that there's no time to do a clause-by-clause analysis. This whole thing is being rushed through with undue haste. This bill is going to affect the income and livelihood of pharmacists across this province. It's going to drive some of them out of business, from all the reports we've heard, from all the discussions I have had with pharmacists and from all the newspaper reports I have heard. Surely there should be some time given to an analysis of what effect it is going to have when a provincial government of the day is going to drive people out of business. It's unjust that they not have a suitable amount of time to do an analysis and to make representation to the government as to the effect this bill is going to have on the livelihood of these people in the province of Ontario.

Ms. Shelley Martel (Nickel Belt): New Democrats have serious concerns about the bill. I spoke about those concerns at length on second reading, and that's why we voted against this bill on second reading. It should be pointed out that the subcommittee wasn't given any choices with respect to the timing of this bill and with respect to how many people could be accommodated, because it was time-limited and the debate on third reading is also time-allocated. So the whole attempt here is to rush this bill through as quickly as possible before the end of this session. There was no consultation with the opposition parties about how the public hearings would occur or how third reading would occur. I am very much opposed to that, so I'll be voting against the subcommittee motion as a result of the time allocation motion which led to this.

The Vice-Chair: Any further debate? Okay, I'll put the motion to a vote.

Mr. Chudleigh: I'd like a recorded vote.

Ayes

Fonseca, Van Bommel, Wynne.

Nays

Chudleigh, Martel.

The Vice-Chair: Carried.

TRANSPARENT DRUG SYSTEM FOR PATIENTS ACT, 2006 LOI DE 2006 SUR UN RÉGIME DE MÉDICAMENTS TRANSPARENT POUR LES PATIENTS

Consideration of Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act / Projet de loi 102, Loi modifiant la Loi sur l'interchangeabilité des médicaments et les honoraires de préparation et la Loi sur le régime de médicaments de l'Ontario.

CANADIAN ASSOCIATION FOR PHARMACY DISTRIBUTION MANAGEMENT

The Vice-Chair: We are going to move on to the first presenter on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act. We have with us the Canadian Association for Pharmacy Distribution Management: Phil Rosenberg, president; Maria Castro, chair of the board; and Ted Wigdor. You have 10 minutes for your presentation. You can speak for the whole 10 minutes, or you can split it for questions.

Ms. Maria Castro: I think we'll have some time toward the end for some questions.

Good morning, and thank you for the opportunity to present to the standing committee today. My name is Maria Castro, chair of CAPDM and executive vice-president of Kohl and Frisch Ltd. Joining me, as you just indicated, is Phil Rosenberg, president of CAPDM. Just to note a correction, to my right is Ron Frisch, president and CEO of Kohl and Frisch Ltd. Ted Wigdor couldn't be with us today.

Over the next few minutes, I would like to provide each of you with an overview of consolidated pharmacy distribution and the impact that Bill 102 in its current form will have on pharmaceutical wholesale/distributors. We are very supportive of the government's effort to create a framework for a more cost-effective and efficient system for the delivery of health care with Bill 102, but we would like to present some areas of opportunity that would ensure the long-term sustainability of the pharmaceutical network.

CAPDM has its focus on achieving ongoing innovation and excellence and ensuring that retail pharmacies and patients have safe, efficient and timely access to vital pharmaceutical products, thereby enhancing health outcomes for Ontarians.

Our distributor members in Ontario consist of McKesson Canada, Kohl and Frisch Ltd. and AmerisourceBergen Canada. Our combined organizations employ over 1,400 people and operate a network of nine distribution centres that deliver tens of thousands of pharmaceutical products to over 3,000 retail pharmacies daily.

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As an integral component of pharmaceutical distribution, we transform the supply chain into a value chain by providing benefits to all key stakeholders as follows:

For patients, we ensure that their prescriptions are available in a safe and secure manner in all parts of the province, including remote areas, by virtue of robust delivery systems that provide pharmacies with up to 11 deliveries per week.

For government, we comply with various regulations and utilize our network for the distribution of information packages, such as we did during the SARS outbreak, and on numerous other topics to all pharmacies across Ontario.

For retail pharmacy, we provide one-stop shopping for all their pharmacy inventory requirements, returns and recalls.

For manufacturers, we reduce their shipments, receivables, inventory and returns that they would otherwise be dealing with directly.

Our proposition and services are complex and based on significant investments in technology, processes and people.

Our value is well-exemplified in a recent US study conducted by Booz Allen Hamilton that concluded that if manufacturers were required to make daily delivery to retailers, their costs would increase by \$10.5 billion annually. Within the context of Ontario, this would translate into a cost of C\$470 million that eventually would translate into higher drug prices.

Clearly our proposition is well-recognized, as today all leading pharmacies and manufacturers have endorsed and adopted consolidated distribution based on its inherent efficiencies and value-added benefits. We all would like to ensure that this system is safeguarded and encourages that investment and improvements in service continue, allowing pharmacists to focus on servicing their patient needs, and manufacturers on delivering valuable new drugs and therapies.

Let me now turn your attention to the impact that Bill 102 has on our organizations. It is important to note that pharmaceutical wholesale/distributors operate on razor-thin net margins of around 1%, so I am sure you can appreciate that any change in our margins would be significant. Our issues are as follows:

First, the bill does not recognize fees that we currently receive from manufacturers for our services. Where these fees are received, the pharmacies are provided the

products at cost. On products where this exists, this represents our entire revenue stream that is at risk.

Secondly, the bill also calls for a reduction in pricing, both on generic and brand name products. Given that our revenue is based on a percentage of cost, the following impact on margins will occur: There will be a 20% drop in revenue based on the rollback of generics; there will be a 4.7% decrease in revenue on brand name products; and overall, the result will be a reduction of 8.22% to our bottom line.

Lastly, given that generic rebates are a very significant factor in the overall health of drugstores in Ontario, if eliminated, it would increase exposure on our receivables and, long-term, on our business models.

Overall, these changes could impact our ability to provide necessary services to retail pharmacy, which might result in the reduction of deliveries and the inability to invest in technology enhancements, which would impinge on pharmacists' ability to provide optimal service to their patients.

We understand the government's intent behind Bill 102 and its desire to curb the rising cost of pharmaceuticals. Our general concern is that the bill does not recognize the role that distributors play in the pharmaceutical supply chain. Moreover, Bill 102 provides for a balance to other stakeholders; however, there is no balance in the form of compensation provided for distributors in the bill. This is especially necessary as costs for distribution continue to escalate, as we see, for example, with the higher fuel costs that impact all of our businesses and us as individuals.

We then respectfully submit the following recommendations for Bill 102:

(1) That all fees from manufacturers to wholesale/distributors be classified as a standard business practice and excluded from the definition of "rebate." We are pleased that the definition specifically excludes discounts for prompt payment, as this is a legitimate business practice. Similarly, we feel that fees from manufacturers should be classified as a legitimate and standard business practice.

(2) Due to the significant financial impact of the changes included in Bill 102, we strongly encourage the government to phase in their implementation. For instance, we recommend that the new pricing model be attributed to new products entering the market and that products already listed on the formulary be grandfathered for a period of time, or have the prices reduced incrementally.

(3) We endorse a transparent system of educational allowances with proper controlling measures in an effort to safeguard the viability of retail pharmacy.

(4) We encourage the government to eliminate the cap on the retail pharmacy markup for high-value drugs, as this will likely result in direct sourcing for manufacturers by retail pharmacy and will result in delays in accessing prescription drugs.

(5) We support the creation of a pharmacy council. We wish to have a representative on the pharmacy council and that the council have a clear and strong mandate.

The pharmaceutical wholesale/distributors serve a vital function for the effective and efficient delivery of health care in Ontario, and we strongly urge you to consider our perspective during your deliberations. We also ask that you examine the significant impact that Bill 102 has on our organizations and our desire to have our needs balanced as others have. Clearly we are here for the long term as a partner to the government of Ontario as well as Ontario patients, pharmacies and manufacturers, and look forward to continuing to contribute and ensuring that we have a world-class health care system.

Thank you. I'll now turn to Ron Frisch.

Mr. Ron Frisch: Thank you. I'm an owner of a company here in Ontario. In fact, my company is in its 90th year in business, being Ontario-owned. Just very briefly, we are in the just-in-time delivery business for pharmacy in Ontario. Just as the auto business has just-in-time, so does pharmacy, except I would submit that pharmaceuticals are more critical in terms of need than other products.

I am concerned about the impact of Bill 102 as set out for two reasons. One is on the manufacturer's side. The manufacturers of pharmaceuticals delegate their distribution function to us because it's efficient and a drugstore can get every drug they need every day from one source in one shipment, and then they can spend their time working with their patients. I'm concerned about the fact that currently the arrangements we have with the manufacturers are fair, they're appropriate, and they need to be maintained in order for just-in-time inventory systems to maintain themselves.

Secondly, I'm concerned about the impact on retail drugstores, our customers and, by translation, their patients. Pharmacies have to be financially viable in order to support the structure we have in Ontario today. I trust you will bear this in mind: The infrastructure we have in place is important on a day-to-day basis. When we're faced with the unknown, as happened with SARS a few years ago, and as we think about the possibilities for the future, it's important to maintain a very strong infrastructure for the delivery of drugs to drugstores.

The Vice-Chair: Thank you for your presentation. We don't have any time left.

Mr. Frisch: Do you have questions?

The Vice-Chair: Well, we don't have any more time left.

Mr. Chudleigh: No, they've orchestrated this so there's no time left.

The Vice-Chair: This is the normal procedure; we do it all the time. We ask the presenter to speak—

Mrs. Elizabeth Witmer (Kitchener-Waterloo): It's not normal procedure. They don't want—

Ms. Wynne: Mr. Chair, as the second presenter is coming, I just want to be clear that—

The Vice-Chair: I'm sorry. We don't have much time. Williamsburg Pharmacy?

Interjection.

The Vice-Chair: Not coming? Okay.

LANE FAMILY PHARMACY

The Vice-Chair: Lane Family Pharmacy? I'll say it again: You have 10 minutes. If you wish, you can speak for the full 10 minutes, or you can split it between speaking and answering questions. Thank you. You can start now, sir. Can you state your name, please?

Mr. Gordon Lane: Thank you for accepting my request to present to you today. My name is Gordon Lane. I'm a pharmacist and a pharmacy owner who lives in Parry Sound. Parry Sound has a market area of 12,000 to 15,000 people. It does not have any major employers. Most people in the region are employed by small business such as mine.

We are located just north of Muskoka on the shore of Georgian Bay. Because of the growing number of baby boomers, our population of retired seniors is growing and will continue to grow over the next 20 years as they choose to retire in cottage country.

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My wife and I are partners in our business, which we purchased in 2003 after relocating to Parry Sound three years prior. We invested in the business because we thought it would be a good investment for our savings and because we wanted to have control over our pharmacy practice, to be able to have not just financial but also personal success. I enjoy being a pharmacist in our community because of the relationships I've developed and continue to develop with my customers. I enjoy helping people. On a daily basis, I offer advice on the safe use of medication that prevents illness and reduces the burden on our hospitals, our emergency medical system and other medical offices. The mental and physical health and productivity of our community benefit from the health advice I offer. Our store employs seven full-time and six part-time staff.

The focus of our business is to meet the needs of our community. We offer a number of services to our community that I believe would not be offered if we were to discontinue them, including breast pump rentals for mothers of nursing babies and compression stocking therapy for people with peripheral vascular disease. Parry Sound area residents were driving one and a half hours to the nearest supplier before we offered the service. We offer public health education activities. I do a monthly article in a free local newspaper on various health topics. I offer seminars on the safe use of medication and heart-healthy lifestyles. Our pharmacy serves the health of our community.

A financial analysis of what is known about Bill 102 reveals that, if unchanged, it will have a devastating effect on my business. The only way to survive financially would be to cut service. I would discontinue my employee benefit plan and cut back on staff. The level of personal service offered would decline. We would not be able to give customers the attention they have come to expect. A pharmacist may not be available to answer questions from customers who walk in or telephone about common medical conditions and drug therapy. Fee-based appointments will have to be scheduled. Many of

the public will choose instead to go the emergency department, or to not seek advice and suffer the consequences. Training on the use of breast pumps, sizing for compression stockings and public health education services that require significant man-hours will be discontinued.

I believe that the health of my community would suffer. On a personal level, I am concerned about the investment that I've made in my business, but I am here mostly out of concern for my community. Ontario is currently experiencing a significant shortage of both nurses and doctors. I expect that you all agree that these shortages are somewhat due to cuts to our health care system that occurred in the 1980s and 1990s. Let's not let the same thing happen to the pharmacists of Ontario.

I have two problems that I have identified with Bill 102, the first one being that it fails to recognize the value of the relationships that have evolved between manufacturers of generic prescription medications and pharmacies. These relationships have evolved out of necessity. The cost to dispense a prescription in my store is \$9.38 per prescription. In 2005, my income per government-funded prescription averaged \$8.50. Dispensing government-funded prescriptions costs me 83 cents per prescription. My store does not profit from offering that service. The generic drug manufacturing industry has been contributing to pharmacies to allow for the ODB system to continue to be offered to the citizens of Ontario at a price below what it costs the pharmacy. It would be a mistake to create legislation that ends this relationship which benefits both the government and the Ontario public.

Secondly, it fails to recognize the cost to operate a drugstore. The proposed new fee of \$7 is well below the market average and does not cover my costs. The markup cap of \$25 will create ridiculously low gross profit margins—net losses in some cases—and will prevent investment in pharmacies and discourage students from seeking a career in pharmacy.

What I would like to see changed in the bill—three points:

—Do not legislate against the financial relationships that have evolved between generic drug manufacturers and pharmacies. Allow for the market to balance things out as it always does.

—Recognize the cost to operate a pharmacy. Offer realistic compensation and enforce regularly scheduled reassessments of the compensation based on the consumer price index.

—Thirdly, continue to develop a healthy relationship with the Ontario Pharmacists' Association. We are the drug therapy experts, and we can help ensure that the money spent on the Ontario drug benefit program is well invested into the health of Ontarians.

Thank you for your attention. I'd be happy to answer any questions.

The Vice-Chair: Thank you very much for your presentation. We have four minutes that we can divide equally between the two sides. Ms. Witmer.

Mrs. Witmer: Thank you very much, Scott, for coming from Parry Sound to make your presentation.

Mr. Lane: Gordon Lane is my name.

Mrs. Witmer: Oh, I'm very sorry.

Mr. Lane: I think the second presenter wasn't available, so I was bumped ahead.

Mrs. Witmer: Okay; Gordon Lane. You said you're from Parry Sound. I did get that right?

Mr. Lane: That's right.

Mrs. Witmer: Okay. I do appreciate your coming. Certainly we've heard from probably hundreds of individuals like yourself about the negative impact this is going to have on your ability to respond to the needs of your patients. What do you think is going to be the most harmful? You've said that if you don't have the time to provide them with the individual service they require, there's going to be pressure on emergency rooms.

Mr. Lane: I would expect; yes. They won't get answers that they're used to getting from the drugstore, so they're going to seek other solutions, and the visible solution would be a doctor's office or a hospital emergency nearby.

The Vice-Chair: Ms. Martel?

Ms. Martel: Thank you for driving from Parry Sound today. I live north of Sudbury, so you've had quite a drive. The government today, I think under pressure from many pharmacists like yourself, decided that they would get rid of the \$25 cap, but I don't think that's going to go very far in dealing with the financial realities of most pharmacists, because the dispensing fees you've already said still remain far below your actual costs, and the government is still intent on essentially destroying that relationship between yourself and the generics when it comes to educational allowances.

Can you give the committee an idea of how much better the situation is going to be with that one change, or are you still looking at a serious financial situation for your own pharmacy?

Mr. Lane: Just give me a moment. I do have an analysis that I did of my store—the \$25 cap. In my store, I was estimating that if this bill had been in place in 2005, my revenues would drop \$157,000. The markup cap of \$25,000 would account for about \$5,000 of that \$150,000.

The Vice-Chair: Ms. Wynne.

Ms. Wynne: Thanks for being here, Gordon. Just off the top, what I want to say is that there is no intention on the part of the government to put small pharmacies out of business. That's not what this is about. So the move this morning—

Mr. Chudleigh: That's exactly what's going to happen.

Ms. Wynne: The move this morning that the minister has made in terms of removing the \$25 cap is an indication of that.

I wanted to ask you generally, Gordon: Do you agree that it's in all of our best interests—pharmacists, patients, the whole province, pharmaceutical companies—to maintain the drug system to make sure that it's sustain-

able over time? Do you think that's in our best interests and in your best interests?

Mr. Lane: Absolutely, and I agree with the principle of cost containment in the drug system.

Ms. Wynne: Right. Thank you very much.

The Vice-Chair: Thank you very much. I want to call on Genpharm Inc. Is anybody here from Genpharm Inc.?

WAYNE MARSHALL

The Vice-Chair: If there is not, we're going to move to Wayne Marshall.

Wayne, I want to repeat what I've said before. If you have a—

Mr. Chudleigh: Chairman, due to the TTC strike, is it possible that if these people show up later, they can be slotted in?

The Vice-Chair: Definitely. We're going to accommodate them.

You have 10 minutes. You can speak for the whole 10 minutes or you can split it.

Mr. Wayne Marshall: There will be time for questions.

Mr. Chair, committee members and guests, good morning. My name is Wayne Marshall. I am the owner and sole pharmacist at Marshall's Pharmasave in Englehart, Ontario. I serve the communities of Englehart, Earlton, Charlton, Elk Lake, Larder Lake and all points between. I was born and raised in Englehart, and I'm a believer in being a person from the north for the north. I became a pharmacist to bring the people of my community a vital health care service in an underserved area, to provide that care at a high level of quality that northerners deserve. To that end, I have been a pharmacist in Englehart for the past five years and in December of last year opened up Marshall's Pharmasave to further increase my opportunities to provide care for my community.

Examples of this care go to speaking at public schools and high schools. I've spoken at community clubs and groups. I've held clinic days and public education talks in regard to health care. I am the pharmacist on our hospitals' new family health team. I'm the provider of pharmacy consultation services to the Englehart and District Hospital. I'm the provider of our pharmacy service to the long-term-care facility in our community. You can see that the pharmacy has become a trusted and accessible health resource in our community, and I'm here this morning to tell you that Bill 102 puts all that in jeopardy. Let me explain.

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Basically, a pharmacy has three sources of revenue. It essentially comes from our professional fee, which, under this bill, will be \$7, an increase of only 53 cents in the last 21 years; it comes from revenue made on goods that are sold; and finally, it comes from an investment made through manufacturers' allowances. To follow best business practices as understood by the minister, I understand that the more I buy, the greater investment allowance I

receive. That, my friends, is pharmacy revenue in Ontario.

Bill 102, as it stands, eliminates one of those sources. The total ban on manufacturers' allowances will result in a decrease in my business of more than \$100,000 a year. For any start-up business, this is a devastating blow, and mine is not exempt from it.

But I'm here to answer the other question for you this morning: What would the average taxpayer in Ontario see? First, I would have to decrease my staffing. This is going to directly translate into a decrease in public care, in quality of care for my patients. Thus, the truly groundbreaking fee for cognitive service that is reported in the bill would vanish in any meaningful way before my professional eyes, like the mirage of a glass of cold water in the desert. Don't get me wrong: I applaud the government's attempt to access pharmacists' brainpower, as they put it in the bill, but I'll be so busy bailing water out of the Good Ship Pharmacy that I won't have time to set the sail on this new course.

Another example of the service we provide is a call I fielded just last week from one of our local physicians. The content of the call basically was as follows: He wanted to improve his patient care because of the shortage of doctors in rural and northern Ontario and was requesting that I advocate on behalf of our patients to ensure that they receive their refill medications on time, in an appropriate manner and with no error. To this end, he told me that he had instructed his patients to phone the pharmacy whenever they ran out of their medication and, in his words, "Wayne would fix the problem." I'm happy to do this for my patients, and I'm happy to do this for my doctors under the current funding system. But under this bill I may have to have them call someone else. Perhaps my local MPP would volunteer to help.

I want to get to the point this morning. I know that the government is aiming to improve the quality of health care for Ontarians. But the reality of this bill on the ground is as follows: Without funding, I'm not going to be able to hire a pharmacist to take my spot while I go and provide in-service training at my local long-term-care facility. It's going to be a decrease in patient care. Without this funding, I'm not going to be able to fulfill my responsibilities on a newly formed family health care team. It's going to be a decrease in patient care. Without this funding, I'm not going to be able to be the resource that the hospital wants me to be to fulfill their accreditation requirements. This is going to be a decrease, a lowering, of patient care. Without this funding, I'm not going to be able to carry the stock I presently carry. This will mean that when someone comes in with their prescription, there are some things I'm not going to have on the shelf and they're simply going to have to wait to get their prescriptions—obviously, a decrease in patient care.

The ripple effects affect not just me, not just my family, not even just my patients whom I care for, but the quality of life for all Ontarians; most specifically, those in northern Ontario. So this morning I'm here to plead with this committee and with this government to make

Bill 102 workable. We need you to understand what this legislation is really going to do on the ground at the local pharmacy level, and to the health of every Ontario taxpayer. I want this committee and this government to allow the OPA and the pharmacy coalition to come alongside this committee and make a system that is fair for all parties involved. The problem with Bill 102 can be solved. We can make pharmacy sustainable in northern Ontario and in Ontario at large, but we need a fair deal.

There are 12 pharmacies in a 400-kilometre stretch between North Bay and Timmins. Eight of those pharmacies are independently owned, like my own. If left unfixed, Bill 102 will make this entire stretch of Ontario a pharmacy wasteland, a disaster in health care.

At best, Bill 102 is a prescription for Ontarians that is going to introduce them to pharmacy wait times, and in all likelihood it's going to be far worse. So I plead with you today: Fix Bill 102.

Thank you for your time, and I'll take your questions.

The Vice-Chair: Thank you for your presentation. We have almost seven minutes. Ms. Martel, it's your turn.

Ms. Martel: Twelve pharmacies between Timmins and Englehart?

Mr. Marshall: North Bay.

Ms. Martel: Second question—you might have heard this earlier; I asked Mr. Lane. The government tried this morning to "soften the blow"—I put that in quotation marks because I don't think it's going to do the trick—around the \$25 cap. Can you tell me what that means in your business?

Mr. Marshall: It means I'll be able to dispense things that are high-cost items without taking a significant loss—I would not have been able to dispense them before—under this bill. What does it mean financially for the bottom line? It still means I'm losing about \$125,000 in revenues for my pharmacy.

Ms. Martel: The \$125,000 you mentioned is related to the promotional allowance or the educational allowance?

Mr. Marshall: Absolutely.

Ms. Martel: So the \$25 cap is peanuts.

Mr. Marshall: It's a great start, but we need to work to make it work.

The Vice-Chair: Mr. Fonseca.

Mr. Peter Fonseca (Mississauga East): Wayne, thank you for presenting. I have to say that you're doing a commendable job for Englehart and for your community, working in your pharmacy, working on the family health team, working with the long-term-care home. It's what we want to see in Ontario as we build our health network.

For too long, pharmacists have been seen by some as just pill dispensers, but you do so much. In your submission, you presented some of the things you do in terms of disease management and helping the community stay healthy. This piece of legislation wants to access the brainpower that pharmacists have and provide those professional services to the community, which you're

doing already, but we'd like to compensate you for that work. Can you answer—

Mr. Marshall: Don't get me wrong. There are portions of this bill that are very encouraging and something that pharmacists and the OPA have been working for for many years. But at the same time, it's kicking the feet out from under pharmacies, because although we're getting a certain level of funding back for cognitive services, we're losing one of our main revenue sources. What I'm here to tell you today is that we simply won't be alive to do those cognitive services. It's that simple.

The Vice-Chair: Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much, Wayne, for your presentation and for the service you provide to your community in the north, similar to my area. My riding is Durham, and I've spoken to about 15 independents like you. They're providing a very important part of health care, which you've said is now in jeopardy.

Everyone knows the rising cost of prescription medication is a serious issue for whoever is the government. But what's missing here, and it's quite disappointing but not surprising with this government, I might say—a lot of the initiatives have reverse-onus provisions and down-loading with very little analysis. To me, if they knew that for you, as a single business entity, it's \$125,000, would you not be a bit suspicious that not just the minister but the drug secretariat—there is some work that's been done to show that there's \$350 million going to saved. It's going to be saved by cheating small pharmacists like you. Do you think there is some research that has been done on this bill?

Mr. Marshall: I don't have access to that type of thing. I don't know.

The Vice-Chair: Thank you for your presentation. Your time is over.

STOUFFVILLE PHARMASAVE

The Vice-Chair: I now want to call on Stouffville Pharmasave: Nayan Patel. You have 10 minutes. If you wish to split them between a presentation and questions and answers, you can do that. Go ahead.

Mr. Nayan Patel: Members of provincial Parliament, guests and fellow health care workers, I'd like to thank you for giving me the opportunity to speak before you today.

My name is Nayan Patel. I'm the owner of two independent pharmacies, one in Scarborough and the other one in Stouffville, Ontario. Perhaps this will allow me to give you a better perspective of the impact of Bill 102 on small-town Ontario, as well as on an urban pharmacy.

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My family immigrated to Ontario from India some 32 years ago. Like many immigrants, we came here with very little to our names. My parents set an example for my sister and me by working hard, contributing to our community and helping others. My parents believed that if you were to follow these principles, you would be

justly rewarded. I do not expect enormous rewards from the government. However, I do expect that legislation that the government passes be written to ensure that it is fair to all the people of Ontario, whether they represent a large corporation or a mom-and-pop operation.

Bill 102 will severely impact the ability of my pharmacy to provide even the minimum amount of health care required by the residents of the community. Over the last six weeks, pharmacists have pondered what changes they would be required to implement in order to survive the impact of Bill 102, if passed without significant changes. Pharmacies would have to reduce their staff, reduce their hours of operation, reduce their inventory and eliminate free services for patients such as delivery for immobile patients, blister packaging medications for patients with compliance issues, and counselling on health conditions that eventually result in reduced visits to doctors and hospitals. Staffing reductions would also mean that the remaining staff would not be able to meet the minimum standards that are currently required by the Ontario College of Pharmacists. This means that pharmacists will have less time to spot drug interactions, less time will be allowed to counsel patients on optimal use of their medications, and less time will be spent on disease-state management and preventative medicine issues. Overall, these changes translate into less-than-optimal outcomes for medications—medications that have been paid for by hard-earned taxpayers' dollars. This will be when the government will be able to say that they're not getting good value for their money. In short, patient care will suffer.

Most pharmacies that reduce these services will survive. However, approximately one in 10 pharmacies will be forced to close their doors despite making drastic cutbacks. A large proportion of these stores that will close will be in small rural areas, often one-pharmacy towns. This, compounded by physician shortages already in these rural areas, may eliminate the provision of any type of health care in their communities. My store in Stouffville will be one of those casualties of Bill 102. The store is currently losing money, since it is only 18 months old and is still considered a start-up business. There is no doubt that this pharmacy is a necessity for the community, since it is on the verge of a large growth spurt. If Bill 102 passes without significant changes, it will stifle new stores opening up in new and developing communities across Ontario.

Currently, pharmacies provide consistent and equitable service to their patients, whether they are covered by the government, by private insurance or if they pay out of their own pockets. Bill 102 may force pharmacies to adopt a two-tier pharmaceutical care model, where pharmacies limit the number of ODB prescriptions they fill or only fill ODB prescriptions during off-peak hours, meaning longer wait times for patients who depend on the Ontario drug benefit plan. We have seen this occur with dentists, lawyers and physiotherapists, just to name a few.

Although unintentional, Bill 102 will unfairly affect small independent pharmacies when you compare them

to large national chains. A major flaw of the bill will penalize small independent pharmacies over the chains. Nationally-owned chains have the ability to circumvent Bill 102's ability to eliminate rebates, as supplier investments could be channelled through and remain in other provinces and perhaps even the United States. All legislation should be fair to all residents. The Ontario government should not pass legislation that cannot be enforced equally on all parties. A law that cannot be enforced is not a good law.

Minister Smitherman says that the government needs to get good value for money, since they are the largest purchaser of drugs in the province. Let me tell you that the Ontario government receives great value for money from the pharmacies of Ontario. No one gets a lower price than the government, period. The average professional fee of a drug store in Ontario is more than twice the amount that the government pays pharmacies directly to provide exactly the same service to all residents in Ontario. I have never treated my clients differently based on how much money I was receiving for providing the exact same service. If Bill 102 is not significantly altered, I will have to revisit this credo in order to survive.

At my Scarborough store, the Scarborough Hospital out-patient mental health clinic had approached me with a problem. They were experiencing a higher rate of treatment failures in their Clozaril treatment program. Clozaril is a drug that is used to treat schizophrenia, and is covered by the government through a special access medication program where the drug is only dispensed through hospitals. Some of their schizophrenic patients were not able to see the psychiatrist in our building, then travel 30 minutes by bus to pick up their Clozaril prescription at the nearby hospital. I agreed to fill these prescriptions free of charge to the patient as long as the drug was supplied to me free of charge, so basically at my expense. Currently I fill over 1,000 prescriptions for these Clozaril patients under this arrangement. Minister Smitherman, you are getting great value for money.

I would like to provide the committee with financial information on how the bill will impact my stores. After taking into consideration financial gains and losses as a result of Bill 102, my Scarborough store would lose approximately \$102,000 from the bottom line, which would then put my store in a net loss position. After I make drastic changes to services and staffing, I believe that I could break even, or manage a meagre \$10,000 profit, hardly enough for incentive to own and operate a pharmacy. My Stouffville store would lose an additional \$26,000 a year, compounded with the losses that I currently have. Even drastic changes to services and staffing would not make my pharmacy viable.

I would like to request the committee to consider the following amendments, of which I believe I've given out some copies, in order to maintain the viability of pharmacy and the services it offers to the residents of Ontario. Thank you for your time.

The Vice-Chair: Thank you very much. We have two minutes left. We're going to start with the government side. Mr. Peterson.

Mr. Tim Peterson (Mississauga South): You're part of a chain of stores. Did Pharmasave help you, in analyzing your financial statements, to come up with these conclusions, putting in the extra gross profits, putting in the cognitive fees and putting in the extra revenues we're giving you?

Mr. Patel: Actually, I've been very active in this bill and I'm a person who has actually helped formulate these spreadsheets to figure out the impact on our stores.

The Vice-Chair: Mr. Chudleigh.

Mr. Chudleigh: Thank you very much for coming in today and fighting the TTC.

It's very difficult to know where this bill is going to go, especially without a good cost analysis. I think if a cost analysis had been done, all of these points that you're bringing up would have become crystal clear to those who are drafting this bill.

In your experience in this country, have you ever seen a piece of legislation, such as this one brought forward by this government, that is going to drive independent businessmen out of business?

Mr. Patel: Frankly, I didn't think the government was capable—

Mr. Chudleigh: Thank you very much.

The Vice-Chair: Ms. Martel.

Ms. Martel: Thank you for the letter that you sent to a number of us well over three and a half weeks ago, which I used in my remarks and which talked about your concerns. It was clear that you were doing some work on this a long time ago. One of your points under "fiscal gap for pharmacies" is that the pharmacy markup has actually been reduced from 10% to 2.4% after a wholesale upcharge of 5.6%. Can you explain to the committee what that means and how that works?

Mr. Patel: If the markup is reduced to 8% under Bill 102—the government has not factored in that a lot of drug companies do not sell directly to pharmacies. We are forced to buy from wholesalers. Wholesalers provide a service and they charge a markup to us. The markup is 5.6%. So if you take 8% minus the 5.6%, that's basically the markup that we have.

The Vice-Chair: Thank you, Mr. Patel, for your presentation.

0950

GENPHARM INC.

The Vice-Chair: I believe Genpharm is here. If they're ready, they can present to the committee. I believe we have Ian Hilley. Good morning. You have 10 minutes. If you wish, you can speak for the whole 10 minutes, or you can split it between speaking and questions and answers. The floor is yours.

Mr. Ian Hilley: Good morning, everybody. Thank you very much for being patient, waiting for me to get through the traffic this morning. It's a privilege to have the opportunity to present to you, and I hope you have been delivered a package of six or seven brief slides that will explain Genpharm's feelings with regard to Bill 102.

The theme of my talk this morning is access, change and innovation. You'll see, for those who have a copy of the presentation, a small photograph on the bottom right-hand corner of the cover page. That is a photograph of four of my colleagues in space-like suits, working at Genpharm's newest facility in the southwest corner of Brampton. That's our Verbena facility. We have invested about \$20 million in that facility over the last three years. That facility is approved by the federal drug administration of the United States to make high-potency medicines such as blood thinners and anti-cancer agents.

We at Genpharm have a global mandate from our parent company, Merck KGaA, based in Darmstadt, Germany, and our governing organization, Merck Generics, to make these high-potency medicines for the entire world.

I'd like to introduce myself. I'm a Canadian, though it doesn't sound very much that I am. I have spent a third of my life in Ontario. I have a wife and two children, and we live in the north of Toronto.

Genpharm is located on two sites: one in southwest Brampton and the other in Etobicoke, which is traditionally our home base. I want to tell you a little bit more about who Genpharm is, why we support Bill 102 and why Genpharm is part of the solution.

Who is Genpharm? Genpharm is 624 people. It's approximately \$100 million of R&D spending over the last three years. It's \$150 million of capital improvements in Etobicoke and Brampton in the future five years. We got our first product approved in Canada in 1989, and since then, we market nearly 90 different molecules in Canada. That represents approximately one third of our production capacity, two thirds of which goes to the United States and the rest of the world. We've been exporting to the United States since the early 1990s. We're the strategic site for development and manufacturing in Merck Generics, which is the third-biggest generic company in the world. We're a part of Merck KGaA, which is one of the top 25 innovative drug companies. We have, as I say, 624 people. That has expanded from a 400-person workforce since 2000. As I say, we have a state-of-the-art facility in high-potency production.

In 2005, we launched three major initiatives: (1) Gennium, a sales and marketing organization in Canada, which is a brand new independent pharmaceutical company that represents Genpharm products across Canada; (2) Prempharm, our brand specialty pharma company, which is the new vehicle which will introduce Merck KGaA's innovative treatments to Canada for the first time in its own right; and (3) Genpharm LP, which is our US affiliate in Long Island.

We are members of the oldest pharmaceutical company in the world, based in Darmstadt, Germany. We're over 350 years old. We have specialties in chemicals and in pharmaceuticals. E. Merck is the single largest producer of liquid crystal chemistry to fuel the growing flat-screen TV, telephone and laptop computer screen business. Genpharm is one of four major R&D sites. As I said, we spent \$100 million over the last three years

developing new products for Canada and the rest of the world.

Today, 80% of our 600 people—500—have higher than secondary education. Over 200 have multiple degrees. Over 100 have been educated in Ontario colleges; a similar number, almost, have been educated at universities in Ontario. About 3% of our workforce have PhDs.

Tomorrow, we want to be a global generics R&D site, a manufacturing site, and we want to manufacture high-potency drugs for the world. We are a strong exporter. In the next three years, we will grow our specialty pharma business, our innovative business. We have a drug that's already been submitted to Health Canada for the treatment of alcoholism. We have a product that's approved for oncology. We are subject to a submission for a product that will help people undergoing hemodialysis who are having challenges getting to their clinics this morning. We already promote a dermatology product for acne to doctors. Finally, in 2008 we will be launching a groundbreaking treatment for Parkinson's disease.

So why do we support Bill 102? We'd like to see access to medicines improved. We'd like to see interchangeability in Ontario on a level playing field with all other provinces. We support the initiative on OFI, off-formulary interchangeability. We think that the government has made a constructive move to improve access with new innovative therapies with the establishment of a thaw around conditional listings. Four of Genpharm's products are already limited to section 8.

We'd like to see the current system change. We'd like to see the system change because we think it's the only way that elements of the system will be sustainable: the system itself, a vibrant generic manufacturing and development industry, a vibrant pharmacy and pharmacist industry. We want to see health outcomes. We want to see new medicines, affordable medicines, and we want to see the enhanced role for pharmacy in patient health care recognized. We want to have investment in pharma manufacturing encouraged in Ontario. We want to be innovative in terms of the provision of pharmaceutical care, similar medicines, educational programs for pharmacists and health care personnel. We'd like to see innovation in new therapeutic areas, and I've already mentioned half a dozen of those that we're involved in.

We want to see innovation in supporting employment of skilled Ontarians. Genpharm has already demonstrated this. Most of the employees we have at Genpharm work in Ontario. Many of them, more than 20%, are graduates of Ontario colleges and universities. Those who aren't, we support through English-as-a-second-language programs to help them master our ways, our culture.

We advocate for a strong Ontario-based pharmaceutical research and development and manufacturing industry. As I say, we spent \$100 million over the last three years. We have a robust domestic and export-driven manufacturing business. We want to employ highly skilled, well-educated people. We're innovative in programs in supporting patients' needs—vital to change in

the health system. As I said, we want to encourage broad access to pharmaceutical products in particular through OFI and conditional listings, and end the use of limited use. We want to consummate and reward the valued effort of front-line pharmacists and front-line pharmacy to satisfy the health care needs of patients.

Thank you very much for listening to me this morning. I'd be happy to answer any of your questions.

The Vice-Chair: Thank you very much. We don't have much time left, about 20 seconds, so I guess there's not enough time for questions. Thank you very much for your presentation.

Mr. Chudleigh: I have a 20-second question.

The Vice-Chair: Sorry. I want to call on West Elgin Pharmacy. Is anyone from West Elgin Pharmacy here? No.

1000

RxCANADA

The Vice-Chair: We'll go back down to RxCanada. Is there anybody from RxCanada? I believe you are Wendy Nelson?

Ms. Wendy Nelson: Yes, I am.

The Vice-Chair: Okay. You have 10 minutes. If you wish, you can speak for the whole 10 minutes, or you can split it between speaking and question-and-answer. Go ahead. The floor is yours.

Ms. Nelson: Thank you and good morning. My name is Wendy Nelson and I'm president and CEO of RxCanada. I appreciate the opportunity to address you today.

Bill 102 will change the Ontario Drug Benefit Act to allow for pharmacists to be reimbursed for "professional services." This recognizes the added value that professional pharmacists bring to the delivery of health care in the province.

We're pleased that Minister Smitherman has announced that at least \$50 million would be made available to support professional services provided by pharmacists, with a focus on programs for patients with chronic disease. This bill provides long-overdue recognition of the value of community pharmacists as members of the patient's primary health care team.

Established in 1997, RxCanada is a pharmacy-sponsored organization that develops and implements programs that can be delivered in the retail pharmacy setting. Our programs assist pharmacists to provide enhanced professional services to their patients. Our focus has been on programs that improve medication adherence.

I joined RxCanada about two years ago after a 20-year career as a senior health care administrator, most recently as vice-president of patient services and chief operating officer with Trillium Health Centre. From my experience, I know the business and the human side of health care from the perspective of hospitals, physicians, nurses and community health providers. Now I am committed to

helping community pharmacists expand their role in our health care system.

I have always believed that community pharmacists play a valuable role in patient care and are underutilized and under-recognized in our health care system. Recent surveys indicate that apart from doctors, patients rely on pharmacists as the second most frequently consulted health care professional on their team. However, it's very difficult for these busy professionals, working in retail settings, to be an integral, connected part of this team.

RxCanada provides what's needed: the necessary electronic connections and patient care programs to allow pharmacists to deliver counselling services and provide medication information to their patients. In Ontario, our 1,300 participating pharmacies are some of the busiest, and dispense the majority of prescriptions filled in Ontario.

Pharmacists in these settings offer RxCanada's programs to their patients. Our programs allow pharmacists to assist patients living with diabetes, asthma, mental health conditions and cardiovascular disease. Large pharmacy chains as well as over 400 independent pharmacies offer our programs to their patients.

Why is the area of medication adherence in pharmacy practice so important to patients and health care funders? Well, consider the following: Patients are aging and living longer, often with chronic disease. These patients account for the majority of medications dispensed through community pharmacies and the majority of our drug and health care resources in Canada. We know that patients with chronic disease frequently discontinue their prescribed treatment over time. They may miss doses or discontinue their medications entirely. For example, in the area of statins, which are used to manage cardiovascular disease, our data at RxCanada mirrors other research findings. An astounding 60% of patients discontinue their medication in the first year. Heart disease, meanwhile, lies silent, waiting to present itself in the acute form of a cardiac arrest or stroke.

There are similar statistics for patients in every chronic disease group, but suffice it to say that medication adherence rates must be improved and be a priority, and community pharmacists are a key in this process.

Pharmacists know when patients understand their medications and take them as prescribed. This improves overall health outcomes and quality of life. This means the health system actually saves money. Research estimates that medication adherence problems and waste cost the national health care system between \$8 billion and \$10 billion per year.

Did you know that 20% to 50% of drug-related problems are caused by issues related to adherence? Did you know that drug-related problems are the single most frequent cause of emergency visits and hospitalization of seniors? These are patients who are hospitalized because they are not taking their medication properly or at all. This translates to about 140,000 hospital admissions and possibly up to 35,000 deaths annually in Canada. These numbers are Canada-wide, not the breakdown for On-

tario, but there is no information to suggest that this province would be any different.

The additional resources promised by the government will enable community pharmacists to change this landscape for patients in Ontario, and it's a wise investment on your part. We know that cognitive services provided by community pharmacists can and do improve medication adherence.

Let me tell you just a bit about RxCanada's adherence programs and how they work. One of our programs is called the professional pharmacy consultation service. It's offered by pharmacists to patients taking only certain medications for a chronic disease. The program, which is currently funded by pharmaceutical manufacturers, prompts community pharmacists to place counselling calls to their patients. During the call, pharmacists answer questions and provide valuable information to patients. As a result, a personal and professional relationship between the patient and the caregiver pharmacist is created. Pharmacists in our participating stores can also offer reminder calls to patients who forget to renew their prescriptions. These calls motivate patients to continue taking their medication and to take it properly. Our data shows that 85% of patients who receive prescription reminder calls from their pharmacy actually renew their prescriptions and stay on their medication. Pharmacists offering these value-added services to their patients are remunerated through a standard fee schedule administered through RxCanada. There is no cost to the patient.

RxCanada's pharmacist consultations are carefully structured to be evidence-based, informational and educational, not promotional. Our programs are recognized by the pharmacy profession because they are developed by pharmacists, for pharmacists—a real pharmacy for pharmacy patient care solution.

But most importantly, our programs do make a difference in patient care. We maintain a secure, anonymized prescription database for compliance tracking and program evaluation. That database is now even used by Canadian researchers who are assisting in the development of drug policy and protocols. Independent evaluation of RxCanada's programs show that adherence rates are 10% to 35% higher in patients who get these services. So just to reassure you, this prescription database is secure, and complies with all provincial and federal privacy legislation.

RxCanada believes, by the way, that this prescription database we retain could contribute to the electronic health record and form the basis of e-prescribing systems across the country, but that, I guess, is a discussion for another day in another forum.

With specific reference to Bill 102, we believe the initial \$50-million annual investment in professional services of pharmacists is a very positive development. This investment will supplement and leverage the modest investments that are already being made in these pharmacy programs.

Current investment is inadequate to allow pharmacists to reach all chronic patients who require these services.

Support and funding from the province of Ontario is welcome news.

Imagine the immediate and tangible benefits to patients in Ontario if the initial \$50-million investment in this bill is coupled with existing proven pharmacy programs. Imagine how quickly this could occur if services can be delivered through established and respected pharmacy organizations such as RxCanada and others, who already have a track record in this field. Imagine an expanded network of pharmacists equipped with the latest drug evidence and tools to effectively deliver the professional pharmacy services Bill 102 envisions. Imagine the efficiency and savings when more patients with chronic disease are cared for by a health care team which includes their community pharmacists.

This is not beyond imagination; this can be a reality in Ontario. These benefits can be realized quickly if, in collaboration with government, pharmacy professional services can be delivered through expansion of established and proven programs.

I want to congratulate this government on their recognition of the value of pharmacists in delivering professional services. As our 10-year history demonstrates, this investment is money well spent.

Thank you for your time today. I'm pleased to take your questions in any remaining time.

The Vice-Chair: You don't have much time. Thank you very much for your presentation.

WILLIAMSBURG PHARMACY

The Vice-Chair: Now I believe we have Williamsburg Pharmacy here. If they are ready, they can come forward. Are you Scott Hannay?

Mr. Scott Hannay: I am.

The Vice-Chair: Sir, you have 10 minutes for your presentation.

Mr. Hannay: I'll have lots of time left.

I want to start by thanking you, Mr. Chair, committee members and guests, for the opportunity to speak here today and tell you how pleased I am that independent community pharmacists were included in the discussions on Bill 102. I hope and expect that pharmacists will continue to be included in our collective search for a solution to rising drug costs in the province.

1010

My name is Scott Hannay. I'm a part-owner of two independent community pharmacies in Kitchener-Waterloo. One of our stores has been owned by my partners for the better part of 30 years and the other opened up for the first time at 9 o'clock this morning. I haven't yet heard how it's going, but I hope it's going better than my morning so far.

The majority of our current business is supplying medications and services to nursing homes and various group homes. I have been certified as a diabetic educator and an asthma educator and am currently the lead clinical pharmacist providing services to our nursing homes. We

employ 25 staff and have a forecasted payroll of \$1 million this year.

I'd like to focus this morning on just one aspect of Bill 102 and hopefully illustrate how it will impact our ability to provide services to the homes, and the subsequent consequences I foresee: the loss of profitability for my store through the reduction of generic drug prices and the reduction or elimination of professional allowances provided by the manufacturers. I need you to understand, as backwards as it may seem—and it does seem backwards—that the arrangement we have with our top generic drug supplier is a critical contributor to keeping our pharmacy profitable. If their prices get cut, our profits get cut, and if the professional allowances are eliminated, our profits will be eliminated. I guarantee you that my situation is not unique. In the past year we've been in negotiations to purchase three other pharmacies in our area and have been privy to their financial records, and it's the same story in every one of those cases.

How will this impact the 1,600 nursing home and retirement home residents we service? I'll try to explain with some examples of what services and products we provide to these homes.

On the services side, we are on call 24 hours a day, seven days a week. It's our commitment to the homes that if they need a medication in the middle of the night, we'll get it. They sometimes do, and we get it there. We're expected to have a pharmacist in the homes one day a week. We do resident medication reviews at that time. We look for appropriate drug use, we reduce drug use, we look for interactions, side effects. We audit the homes to make sure the staff are following procedures correctly in the distribution and administration of medications. We provide educational in-services to the nurses. We fund educational dinners for the nurses. And we sit on most committees in the homes.

On the products side, we provide a lot of medical equipment to the homes. Recently, I bought a home a \$1,500 blood pressure machine, because it wasn't in their budget to buy one. I just finished buying another home \$900 worth of pill crushers, because it wasn't in their budget. Last week I got asked to buy an autoclave for a home, at about \$2,000, so they could sterilize their toenail clippers. We've purchased over \$100,000 in medication carts this year alone so that the nurses can push the pills around. All our diabetes monitors are free. All our diabetes products are given to the homes at cost. To help staff quit smoking, we provide anything they need to quit smoking at cost. In April, we bought \$5,000 worth of textbooks for the homes. And every year we provide over \$50,000 in free drugs to residents, which we're not able to bill ODB for.

As a major supplier, pharmacy is expected to make significant contributions to the homes for areas like education, recreation, home improvement, charity work, fundraisers and physician recruitment—a significant investment.

If Bill 102 passes as is, I don't imagine I'll go out of business, but will it be a business worth having? I will

have to make two major adjustments that will affect what we feel is outstanding patient care that we currently provide. The first is that we'll have to cut staff hours. That's going to lead to busier days, slower service and a greater potential for medication errors. The second is that I'll have to reduce time and funds available to our nursing homes, which will lead to poorer quality of care and lifestyle in the homes.

I know that Bill 102 is not going to go away. I just ask for a guarantee that pharmacy, and specifically the Ontario Pharmacists' Association, be given every opportunity to advise and negotiate a sustainable model for all sides. Thank you.

The Vice-Chair: Thank you very much for the presentation. We have a lot of time: almost six minutes. We can divide it equally. We'll start with Mr. Chudleigh.

Mr. Chudleigh: The professional services that you mention—the government has suggested that there's going to be about \$50 million in that budget. I'm given to understand that the professional allowances that the generics currently give you is about half a billion dollars, about \$500 million province-wide. They're going to replace your current income from a private source with about 10% of public money. So one source comes from the industry, the other comes from the taxpayer. Does it make a lot of sense to you that somehow in this bill we're going to save money by taking half a billion dollars of private money out of the system and putting back \$50 million of public money from the taxpayers? How is the taxpayer going to save money on that? Do you have any thoughts on that one?

Mr. Hannay: I thought I just didn't understand. I don't understand.

Mr. Chudleigh: I've been struggling with it myself. And to lower costs of Canadian drugs—I mean, the Americans are already coming over here in droves to buy our cheaper drugs. So what is this bill really going to try to accomplish, other than take half a billion dollars off the expenses of the generic companies and replace it with \$50 million of taxpayers' money? It's very confusing, don't you agree?

Mr. Hannay: I do. I certainly appreciate the recognition of paying for services. I've been graduated for 10 years now, and it was told to us in school that that's where pharmacy is going. The recognition of that is important—

Mr. Chudleigh: Front-line health care workers—absolutely.

Mr. Hannay: The two don't equal each other, from our point of view.

Ms. Martel: Thank you for making it here this morning, despite your difficulties.

I want to return to this, because on one side of the ledger we have the government saying that they're going to provide \$50 million for counselling services. We don't know what the structure of that is, because it's not outlined anywhere in the bill, and we certainly don't know what that means per pharmacist. It's not very much if you look at all of the pharmacists operating in the

province; and about a 40-cent increase in the dispensing fee, which will not bring you up to what the current cost is to dispense in the first place. And on the other side, there's the end of the promotional allowance and a reduced markup, from 10% to 8%; but it's bigger than that, because if it's on the wholesale price then the reduction is even greater. So in terms of those two sides of the ledger, do you see that with the \$50 million and the change in the dispensing fee, most pharmacists are going to be able to make it?

Mr. Hannay: It's tough to speak for most pharmacists. In our own situation, we're in a more fortunate position. Doing nursing home work, the increased fee would help us, but it would still—and we don't know how much of that \$50 million would be available, but we're looking at probably \$100,000 less profit a year in our store, based on guesses that we have and allowances. In today's market, that's a full-time process.

Mr. Peterson: It's the government's position that we're going to be giving you a real dispensing fee, increasing that, and that we're going to be giving you a real 8% markup plus a cognitive fee. But the rebates—what kind of rebate would you get on your generic sales or purchases?

Mr. Hannay: From our top supplier, across the board, it would probably average out to 40% to 45%.

Mr. Peterson: For you directly as the retailer?

Mr. Hannay: Yes.

Mr. Peterson: And that comes through a wholesaler?

Mr. Hannay: No, it comes in the form of credit to the supplier. From our non-top suppliers we get zero. We kind of put all our eggs in one basket and live with that.

Mr. Peterson: Would you negotiate these rebates directly with the suppliers yourself?

Mr. Hannay: Yes.

Mr. Peterson: And they mainly came from the generic industry?

Mr. Hannay: Yes.

The Vice-Chair: Thank you, Mr. Hannay, for your presentation.

WEST ELGIN PHARMACY

The Vice-Chair: I believe we have with us right now West Elgin Pharmacy. Welcome. You have 10 minutes for your presentation. If you wish, you can speak for the whole 10 minutes or you can divide it between speaking and questions and answers. Go ahead; the floor is yours.

Mr. Fayeze Kosa: My name is Fayeze Kosa. In fact, I'm representing Mr. Bill Nicholson, who couldn't attend today. I'm not really well prepared, but I have a general idea and I want to share it with you. I'm an elected council member of the Ontario College of Pharmacists. I represent almost 1,000 pharmacists in my district. My district consists of Etobicoke, Mississauga and Toronto West.

1020

In fact, I agree with the minister in trying to save money with the bill, but to an extent I don't agree with

the way we are trying to save money. I think the best way is to try to get the positive from this bill, which is mainly trying to give pharmacists a little bit of authority and to involve pharmacists in the health care system which, in turn, is going to save a lot of money.

The second thing I want to mention here is that Mr. Bill Nicholson authorized me to speak about his business. It's a small community pharmacy, and this small community pharmacy is not going to achieve a lot of profit like chain drugstores, so they are trying to make a personalized and customized service between the patient and the pharmacist. What I'm trying to say here is that by making cuts for the pharmacy in that way, which is a rebate—I already provided the committee with three pages that I was provided with by Bill. It's regarding how much money he makes for now, which is almost 1% or 2%. By applying this bill, he will lose almost 5%.

I think I agree with the member of the committee here that what we are trying to do is save money, but the way we are trying to achieve it is a little bit misleading. What we are trying to say is, we can go with this bill, but with a little bit of modification, a little bit of amendment that all members here might agree with me. I would agree with a lot of pharmacists I spoke with who said, if this 8% is going to be from the wholesaler price, which is really a fair amount—8% is really a fair amount—I think they will be happy to go with this bill with no problem. The main idea is cutting 40% that generic companies are giving to the pharmacist and the government is going to reduce the prices 20%, so there is 20% extra. With this 20% extra, with the approval of the government, if it goes directly to the pharmacy, for sure they will go 100% with the bill. What I'm trying to do is give the extra 20% to the pharmacies, to the drugstores, so they can achieve the services that they provide now—they don't have to lay off staff; they don't have to get rid of staff or reduce services or hours—and at the same time you are going to also save 20%. I'm asking you to give 20% to the pharmacy, and at the same time, you give the 8% from the wholesaler. I think most of you will agree with me that this will be a fair deal. That's all, sir.

The Vice-Chair: Thank you very much. Would you mind stating your name again for the clerk? They didn't catch it very well.

Mr. Kosa: My name is Fayeze Kosa.

The Vice-Chair: Fayeze, you have six minutes to answer questions. We're going to start with Ms. Martel.

Ms. Martel: Thank you for coming here and replacing somebody else this morning. You said you're from the college and you represent a number of pharmacists. In terms of the dispensing fee as it currently stands, even with the increased amount that the government proposes, what's the difference between what the government proposes and what the real dispensing fee cost is in a pharmacy these days? Can you respond to that?

Mr. Kosa: Yes. The dispensing fee in fact, the \$6.54—most independent drugstores, due to competition, are like some chains, like food chains maybe: they waive the \$2. So the actual fee is almost \$4.50, or something

like that. If you're going to deliver this medication to the patient, you're also going to lose \$2 to \$3 at least for their prescription. So actually you don't really get anything from the fee except a buck or two. This is actual life, yes. But because there is competition, you can't say, "I'm not going to waive the \$2," because they're going to go some other drugstore. Some stores don't waive the \$2, which is their choice. It really depends on the location. If you're independent, you need to get a little bit of money because you don't have a front shop; otherwise, you can't survive. The problem with this bill—it's a very good bill to save money, to an extent—is, it's mainly going to affect independent stores. This is the main idea. We don't want to make it a monopoly here. We want to make it like free trade, that's all.

Mr. Peterson: Most pharmacies retail things other than just drugs, but let's deal with the 8% markup. In the past, a generic or a branded pharmacy could increase their prices to you and that would eat into your markup. We are planning on eliminating that so that your markup becomes a real gross profit, and that is intended to replace some of the rebate money. Could you let us know what you see the rebate money as, and do you trust the government to eliminate this markup?

Mr. Kosa: I agree with the government entirely about trying to give the pharmacist a fixed amount, but what I don't agree with is that the bill doesn't say this 8% is going to come from the wholesaler. In fact, the wholesaler in Canada usually gets between 5% to 5.5% from the company. Let's say I'm a wholesaler and I buy something for \$10. I'm not going to sell it to you for \$10. No, I'm going to add 5.5% to get a profit for me, and then I'll give you the rest. So if the government allows 8%, the pharmacy is actually going to get only 2.5%. For now, there are a lot of medications where we go by something called "acquisition cost," which means that I don't get any money from the government. I give the medication only with a dispensing fee. I only get a dispensing fee. If you calculate the amount of the drugs that have acquisition costs and the drugs that don't have and the government gives me the 10% now, you will see that it's almost 8%.

I agree with the government 100% if they approve the 8% for the pharmacy, not for the wholesaler. They're not going to make any money. Do you think any business anywhere, not only pharmacies, is going to survive with 2.5%? I doubt any business is going to survive. If you go to a grocery store, they add 30% or 40% at least. They have a lot of expenses. In order to cover all these expenses, if you're going to reduce everything for the pharmacies, they have to close, or maybe they have to move their business to another province or another country; I don't know. But I agree 100% if the minister agrees to give the 8% from the wholesaler to the pharmacy. That's it. I don't know how much the wholesaler will get, but this is what should be fair, in my opinion.

Mr. O'Toole: Thank you very much, Fayez, for your presentation this morning. I thought it was quite sincere and honest. In fact, just listening to your discussion with

Mr. Peterson, it surprises me that for a bill this complicated in terms of a phenomenal business relationship change being initiated by the government, there isn't more research available.

As Mr. Chudleigh pointed out, \$50 million to replace for the dispensing fee, the potential loss in revenue is surprising. It's \$50 million to replace \$500 million. You're now talking about this 8% markup between the actual pharmaceutical company and the wholesaler. Do you have any confidence that they have the kind of clout to make sure independent pharmacists actually get that 8%? If there isn't any research, what would you recommend to Mr. Peterson? Perhaps Dalton is listening to him; I don't know. Because this bill is faulty and frail; it's going to eliminate the small pharmacist. What do we need in here to make sure that that is actually passed on to the pharmacist?

Mr. Kosa: In fact, as I said, there are a lot of positive things in the bill that are giving a little bit of authority to the pharmacist, so we're going to reduce expenses on health care, so I agree with the minister in trying to involve pharmacists more in the health care system. What I'm saying is that it should be a little bit clearer. A lot of people say, "The 8% is for whom? Is that for us? Is that for the wholesaler? How are we going to divide this 8%?" I would suggest the point made by Mr. Bill Nicholson here, which is to fix the 8% for the pharmacists; 8% is really fair.

Mr. O'Toole: Implement the 8% markup.

Mr. Kosa: Yes. I think this will cover any losses even from the repeat. At the same time, you're also going to save 20%.

Mr. O'Toole: So the 8% would actually come from the consumer, then, because the person paying for it, either through a drug plan or out of their pocket, would be paying for it.

Mr. Kosa: I'll tell you what, sir: In fact, they are now paying 10%.

The Vice-Chair: Thank you for your presentation. The time is over.

1030

ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

The Vice-Chair: I believe the Ontario Coalition of Senior Citizens' Organizations is here. Welcome. You have 10 minutes. If you wish, you can speak for the whole 10 minutes.

Ms. Judith Jordan-Austin: Thank you very much for seeing us this morning, ladies and gentlemen. It's good to be here.

The Vice-Chair: Would you mind stating your name?

Ms. Jordan-Austin: Yes, I'm going to do that right now. We represent OCSCO. This is Ethel Meade, who is the co-chair. I'm Judith Jordan-Austin, a vice-president of OCSCO. After all these professional people who have been speaking, we're glad to be here as professional volunteers.

The Ontario Coalition of Senior Citizens' Organizations brings together over 150 seniors' organizations throughout the province, with a combined membership of over half a million, so although we're all consumers, we feel we are speaking in a loud voice for consumers today. On the whole, we are very supportive of this bill, and the government's aim of containing ever-rising costs is an aim we fully endorse.

I know you have this presentation before you, so I shall just skip through it.

We are very glad that there's less paperwork, but we're a little concerned about the accessibility and the speed of the accessibility for the patient. I understand we have been told that the chief executive officer will report directly to the deputy minister and not have to go through cabinet, so we're hoping that expedites the matter. We sincerely hope that this establishment of an executive officer reporting to the deputy minister will have that effect.

We urge the government to include in the bill a clear declaration that Ontario will co-operate fully with Health Canada's effort to achieve a common drug formulary, and we hope that Bill 102 fits in well with the national research project on drug benefits.

What we don't have, but what we badly need, are tests of one drug's efficacy as compared to another drug that claims to be effective in treating the same health problem. As you know, there's interchangeability with drugs, generic and patented, but sometimes that interchangeability is dangerous for the patient. Because of the base that is very often used—for instance, if a pill has a lactose base and people are lactose-intolerant, it can cause problems—whether that will show up in the chemical analysis of the two kinds of interchangeable pills is a question.

We hope that research and development will be taking place in Ontario as well as elsewhere.

There is a tendency for the pharmaceutical industry to keep their patents evergreen; that is, to change one thing slightly but actually pretend it's the same pill, and we're concerned about that.

We would suggest that it's necessary for Ontario to do their own funding of research. We believe that pharmacists who are fighting to keep their rebates are doing so at the expense of their patients and of the taxpayer-supported Ontario drug benefit program. We hope that such rebates will stop.

We're not in favour of increasing what some people call dispensing fees, and I have been corrected to say that it should be "professional fees." This concern extends particularly to subsidized residents of long-term-care homes, who now must pay dispensing fees out of their so-called comfort allowance, which is \$117 per month that they receive.

There's a certain part of the bill, part II, paragraph 2, which says, "The public drug system aims to involve consumers and patients in a meaningful way." We especially hope that that indeed will take place. We know that there will be some advisory committees established.

We have been briefed on that. I just hope that it does occur before everything is already set in stone.

We are satisfied with the main thrust of Bill 102 and hope it can be modified to meet the concerns we have addressed. Thank you very much. Are there any questions?

The Vice-Chair: We have a lot of time for questions. We have four minutes, and we'll start with the government side. Ms. Wynne

Ms. Wynne: Thank you, Judith and Ethel. Thanks very much for being here. You raised the issue of public involvement, Judith, and you talked about part II—

Ms. Jordan-Austin: Part II, paragraph 2.

Ms. Wynne: Okay. So what you're looking for is involvement with the process. Whatever the drug executive officer is going to be planning or questioning, you're asking for public involvement in that, specifically seniors' involvement?

Ms. Jordan-Austin: Oh, yes, because seniors are more prone to difficulties with drugs and drug benefits, and they require, I think, input.

Ms. Wynne: That's the other thing I wanted to comment on, more than a question. Some of the issues that you've raised go beyond the scope of the bill, but they point to questions—as usual, both of you get to the heart of the matter, and I think you're raising issues that need to be looked at. As I say, they're outside the scope of this bill, but what I'm assuming is that you're pointing to some things that you'd like to see looked at in the future. Is that a fair assessment?

Ms. Jordan-Austin: Yes, I think so. Ethel, do you want to say anything?

Ms. Ethel Meade: We also are interested in the government involving itself with Health Canada in meaningful ways. There are a lot of flaws in the way Health Canada handles the approval of drugs, and we point out some of them in our paper here. To be speaking on equal terms with Health Canada, we need to have our own research and development going on in Ontario.

The weakest thing about the tests that are given us about drugs is they are always tested against a placebo instead of against another drug. That just means it's better to take this than to do nothing, but it doesn't tell you what is the best thing that you should be taking. That is a very, very serious flaw.

Ms. Wynne: Thank you very much for the work that you've done all along on this issue.

The Vice-Chair: Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. It's very important to respond. This is a very important program for seniors. I'm rapidly approaching that era myself, so I appreciate your guardianship over this important aspect of health.

You do raise two very important points: the efficacy trials, which I think are important to the reliability and the predictability of some of these claims by some of these very expensive drugs. I think that is important. Otherwise, the pharmaceuticals, the multinationals—they do have shareholders, whether it's Merck or whoever. Their shareholders—primary importance. It's about a

15% annual increase in the actual cost and application of drugs, so a lot of attention has to be paid to this.

1040

But you mentioned a couple of things. You're critical of the hidden rebates from the small, independent pharmacists. I know in my riding, they're capital A citizens in small-town Ontario. They provide, as they said, to seniors' residences, in a very generous way, a lot of what you do: voluntary service, long-term care etc. Yet you're also saying that you oppose any increase in the dispensing fee—

The Vice-Chair: Mr. O'Toole, do you want to leave any time for an answer?

Mr. O'Toole: Unanimous consent just to have a little more time.

The Vice-Chair: Unanimous consent?

Interjection: No.

The Vice-Chair: It's no.

Mr. O'Toole: How are the independent pharmacists going to get more revenue?

The Vice-Chair: We have to move on to Ms. Martel. Thank you, Mr. O'Toole, for your questions.

Mr. O'Toole: You see, they're not allowing a full discussion on this bill. It's tragic.

Ms. Martel: Thank you, both of you, for your participation this morning. You raised some concerns, and perhaps, given the limited time, I want to share those concerns.

Number one, you talked about a new process for section 8. Part of the problem is, there isn't any process for section 8 that's listed in the bill. It's null and void.

Number two, it says that there's going to be a more rapid process to approve new generic drugs, and of course, there's nothing outlined in the bill about what that process is going to be, so we operate in the dark some more.

We talk about some of the committees that the government promised to establish: a citizens' council, there's no provision in the bill to establish that; there's no provision in the bill to establish the pharmacy council.

Finally, we could have involvement of seniors in the work of the executive officer. That's not outside the scope of the bill; it's just that the government doesn't want that. They have an unelected individual who's got huge powers and huge control, and if the government really wanted to involve seniors in any of the work of the executive officer, that could be written into the bill. I think the government just doesn't want to do that.

So your concerns are really valid, and most of the bill is a shell. Most of what the government talks about in its briefing notes doesn't even appear as provisions in the bill, so we should all be very worried about where this is going to end up.

The Vice-Chair: Thank you very much for your presentation. The time is over. Thank you, Ms. Martel.

TIM TOWERS

The Vice-Chair: Now we call on Mr. Tim Towers. Mr. Towers, you know the rules, I believe. You have 10

minutes. You can speak the whole 10 minutes if you wish; if you don't, you can split it between speaking and also question and answer. The floor is yours when you are ready.

Mr. Tim Towers: Good morning. Thank you, Mr. Chair, committee members and guests. My name is Tim Towers, and I own a community pharmacy in southwest Mississauga, better known as Tim Peterson's riding.

My pharmacy, Keene Guardian Pharmacy, has been a part of the Clarkson community for almost 45 years. My father purchased the pharmacy from the original owner in 1976. Pharmacy ownership has been a part of my life for over 30 years. So I am before you today speaking with passion about a large part of my life.

As I tried to prepare for today, I was struck by the limited time I have to express to you how we as pharmacists participate on a regular basis in the lives of our patients.

I am reminded of this past weekend when I met two of my patients, a husband and wife, in Orillia, who were also participating in the Ride for Dad, a motorcycle rally to raise funds for prostate cancer. This couple introduced me to their group—quite proudly, I might say—not as Tim but as their pharmacist. Make no mistake. I've known these people for 20 years; they know my name. This is the kind of relationship we as community pharmacists develop on a daily basis with our patients. It's these kinds of relationships, which have allowed pharmacists to achieve a 98% trust rating with the people of Ontario.

Our patients trust us and listen to us. It is this trust that allows pharmacists to engage in patient-focused care and education on a continual basis.

I'd like to give you an example of the kind of non-traditional programs that pharmacists provide to their patients. Imagine, if you can, giving CPR to someone on the side of one of our Ontario highways. Now imagine that that person is one of your own children. That is a surreal experience that I had almost one year ago today. It is that experience which was the genesis of a program which I am now offering at my pharmacy. I believe that CPR training is invaluable and most especially in my community, which has an older population. This program may in fact just save someone's life one day.

By the way, the funding for this initiative is being provided by Drug Trading's very transparent professional pharmacy enhancement program, also known as the acronym PPEP. This is a program which uses professional allowances from our generic partners and allows participating pharmacists to create programs such as this.

If you're looking for transparency in health care for professional allowances, I would encourage you to look at this program as your model. Pharmacists and pharmacies commit in writing to using these professional allowance dollars in various ways, all with the intent of improving patient care.

I understand that the health system is broken. I recognize that Bill 102 is a bold step to create a new system which is progressive and serves the patient better. I applaud the creation of the pharmacy council. After 18

years in the background, pharmacy finally has the recognition as a rightful participant in the creation and maintenance of a better health care system for the citizens of Ontario. I enthusiastically endorse and appreciate the government's recognition of the value we as pharmacists have between our ears. To finally get paid for our intellectual contribution to health care is a huge step in the right direction.

There is a fly in the proverbial ointment, however. The proposed change in reimbursement may prove to create an environment in which pharmacy is no longer sustainable, especially in the expanded vision the government has for pharmacy.

I am an executive board member of the Ontario Pharmacists' Association, the OPA, and in that capacity, I am privy to some of the amendments to Bill 102 that the OPA will be suggesting tomorrow. I encourage you to look closely at these suggestions, as OPA is a recognized voice for pharmacy and pharmacists in the province of Ontario.

Specifically, drug manufacturers must be able to continue to invest in the ever-increasing level of care of our patients via a truly transparent system like that of Drug Trading's PPEP program, which I mentioned earlier. This participation should be strictly controlled by a code of conduct. Also, the true cost of providing the more mechanical process of provision of drugs—i.e., the fee and markup—must be revisited with the intent of addressing the erosion of pharmacy profit margins over the last number of years.

You have an ally in health care in pharmacy. We want to participate, we want to help, and we can. Through our involvement in the pharmacy council and moving in concert with government to expand the scope of pharmacy practice, we can significantly improve patient access to care, as well as creating a more cost-effective health care system.

The Vice-Chair: Thank you, Mr. Towers. We have four minutes for questions, and we'll start with Mr. O'Toole.

Mr. O'Toole: Thank you very much for a very committed—I liked your description of the professional allowance application in your own case, real life. I think that speaks well to pharmacists I've heard from in my riding of Durham who are concerned. I would say that the impression I'm getting from them—I also know the director from the OPA from my area. He's the person I speak to regularly. I think they've been sort of hood-winked by the OPA, sort of got—somebody used the term earlier—misled by the secretariat or the minister, because there's nothing in here. There doesn't seem to be the research, but the OPA's Marc Kealey actually said—I saw him on television—this is a good deal.

Now, you're right: It's the carrot-and-stick kind of issue going on here. Two good parts are the council as well as the professional fee. Those are very good and have been long sought after for the profession.

1050

What's bad is the lack of public openness, and the money part. I see some of these business plans here

where their bottom line is shredded. What kind of information do you need from Tim—your MPP at the moment—to get you to endorse Bill 102? We all know the challenges of drugs and the rising costs. What could you tell them and us today that would improve this bill? Just some of the analyses that the \$500 million that's being taken out of the system, and they're going to give you \$50 million back—

The Vice-Chair: Mr. O'Toole, I guess your time is over. Ms. Martel—

Mr. O'Toole: See, they're limiting the debate here.

Mr. Towers: May I briefly respond to that question?

Mr. O'Toole: You're limiting the debate—

The Vice-Chair: He's not leaving time for your answer.

You're doing a statement. I have to move to Ms. Martel. Sorry.

Ms. Martel: Go ahead and answer, if you'd like, Mr. Towers.

Mr. Towers: My response to that is, from an OPA perspective, I don't believe that the OPA was necessarily misled. There was a consultation process. Marc Kealey did acknowledge that OPA is onside for it. There are a lot of things that pharmacists have been arguing for years that we need to have put back in the legislation; we need our rightful place at the table. There are some good things in that. But Marc also addressed the issue that there is concern about the sustainability of pharmacy. He has always addressed that concern.

That was one thing that I wanted to at least comment on; your statement.

The Vice-Chair: Thank you very much. Mr. Peterson?

Mr. Peterson: Thank you, Ms. Martel, for letting him answer that question. It was much appreciated in parliamentary democracy.

Ms. Martel: If we had more time, we wouldn't have to do it like this.

Mr. Peterson: Tim, thank you for all your help in consulting with us and being very informative in terms of the financial statements of the pharmacies etc.

One of the areas that we're trying to speed up is new drug delivery and breakthrough drugs, as a way of helping the drug companies get faster access to the market and patients get faster access to the market. Do you have any experience in this that you can enlighten us with?

Mr. Towers: The process currently seems to be one that's slower than obviously the public would like. I think creating a more open review of drugs in the province, something like—the OPA operates a drug information centre called DIRC which does analyses for a number of different companies as well as jurisdictions. DIRC is a vehicle that the government may want to consider as a publicly accessible and open interpretation of what should be listed in the formulary.

The Vice-Chair: Thank you, Mr. Towers. Your time is over.

MULTIPLE SCLEROSIS SOCIETY
OF CANADA, ONTARIO DIVISION

The Vice-Chair: Now we can call on Multiple Sclerosis Society of Canada, Ontario division. They are here.

As has been said before, you have 10 minutes.

Ms. Deanna Groetzinger: My name is Deanna Groetzinger. I'm vice-president of government relations and policy for the Multiple Sclerosis Society of Canada, Ontario division. I was to be joined this morning by a volunteer with MS, but unfortunately, because the situation with the TTC, she wasn't able to be with us. I will carry on without her. We are very pleased to offer the perspective of people with MS on Bill 102.

Overall, the MS Society is pleased with many aspects of the proposed changes to the drug system as outlined by the minister. We believe the views of the MS Society have been heard on many aspects of the proposed changes.

For example, we are very supportive of giving people affected by the drug program a direct say in the decision-making about which drugs Ontarians will have available to them to improve and maintain their health. It's a very positive step forward to include two patient representatives as voting members of the committee to evaluate drugs.

The MS Society also supports the creation of a citizens' council to give the public a say in drug policy development. The government of Ontario is to be congratulated for this initiative.

Likewise, it's an excellent step forward to have a more open and transparent approach to the status of drug reviews and the decisions of the committee by making them available on a website. For far too long, these decisions have been wrapped in secrecy.

We also appreciate that the cumbersome section 8 process will be removed and replaced—we most certainly hope—by other mechanisms that won't involve the paperwork that currently faces physicians who try to assist their patients in obtaining one of the MS therapies.

Our strong recommendation is that these therapies be placed on the full formulary, since we are convinced that no one would take an injectable medication that causes significant side effects just because it's there. They are being used properly.

Indeed, there are many positive parts to the proposed reform of Ontario's drug system. However, most of them are not even contained in Bill 102. Some initiatives in the bill do give rise to a number of concerns, concerns which the MS Society hopes the members of this committee will help resolve.

For example, the MS Society recommends strongly that the language in the legislation regarding interchangeability of "similar" medications be clarified. When we asked the staff of the Drug System Secretariat about interchangeability, we were told that it is not intended to allow therapeutic substitution, but merely to allow greater interchangeability of brand and generic drugs,

and to prevent the practice of "evergreening." If this is the case, then we urge that Bill 102 be amended to ensure this intent is realized.

We have also been assured that physicians will retain the right to specify "no substitution" when they write prescriptions. This is an important aspect of the physician-patient relationship, and we urge this committee to ensure that there are no changes to this right.

We've also been told by the minister and Drug System Secretariat staff that a key aspect of Bill 102 is that it will improve patient access to drugs by allowing rapid funding decisions to be made and by eliminating restrictive listing categories. This is commendable, but the MS Society urges that this committee look at two possible amendments to the parts of the bill that are intended to speed access. We strongly recommend that a definition of "breakthrough drugs" be carefully defined, and that quality of life be included as an important health outcome criterion. The legislation is silent on both of these issues right now, and we suggest it should provide guidance on these issues for the subsequent regulations.

The main way that improved patient access goals are to be realized, it appears, is through the creation of a new executive officer position. We are concerned with the seemingly unfettered power of the executive officer to list and delist drugs that will be included on the provincial drug formulary. Certainly, this position will exist with the usual checks and balances within the civil service; however, the MS Society does not believe that this is enough when dealing with decisions that literally could mean the difference of life or death to thousands of Ontarians. We recommend strongly that a formal appeal process be instituted so executive officer decisions on "no listing" or delisting drugs can be appealed. Not to include this important mechanism would be contradictory to the other goals of transparency and accountability.

On behalf of the MS Society of Canada, I thank you for the opportunity to share our views on this very important issue, and I look forward to your questions.

The Vice-Chair: Thank you for your presentation. Ms. Martel?

Ms. Martel: Thank you for your presentation. I want to deal with some of the positives steps that you said: number one, that the government is including two patient representatives as voting members of the committee to evaluate drugs. You'd know that that provision doesn't appear anywhere in the bill.

Ms. Groetzinger: Yes, I do.

Ms. Martel: Secondly, there is no provision in the bill to create the citizens' council. Thirdly, there's no provision in the bill to know what the more open and transparent approach is to the status of drug reviews. There's no provision in the bill to tell us what the change is going to be around section 8 so we know if we're going to get something better than what we've had. And there's no provision in the bill that talks about what the process will be to allow rapid funding decisions to be made.

Given that none of this actually appears as provisions in the bill, are you not concerned that, while the gov-

ernment says one thing, it doesn't put any of these provisions in the bill to ensure that these things happen?

Ms. Groetzinger: Indeed, it is a concern, as we've pointed them out. I understand that perhaps not every piece of legislation can have every single detail in it, and probably that would be unworkable. I would hope that this committee would take this on, to provide some amendments to the bill to include some of the issues that we've raised around appeal processes, about the definition of "breakthrough," and issues around interchangeability.

While I am not as concerned perhaps around some of the things around the citizens' council and the inclusion of a patient voice on the committee, I would actually be much more comforted if those were in the bill.

The Vice-Chair: Mr. Peterson?

1100

Mr. Peterson: Thank you for your comments. Part of the philosophy of this bill is to expedite the faster approval of drugs and to work more effectively with people by taking the decision-making out of government and putting it in the system. When I say that, I'm referring to the fact that on things like section 8, cabinet will no longer be approving the change of drugs. We're doing many of these things by taking it out of legislation and putting it into policy and regulation. That is the intent with things like the pharmacy council. I'm surprised that people would not see that as a more efficient and responsive way to do it, so that every time we want to make an amendment, it's not seen as a major change of legislation but rather a change of policy and a change of regulation, which from a government point of view is much easier to change.

Ms. Groetzinger: In terms of some of the changes—as you say, taking it out of cabinet, I think that's to be applauded. It actually will allow more transparency because the decisions of a civil servant can be put on a website, as opposed to those that are made in cabinet. Our major concern around the creation of an executive officer position is the lack of an appeal mechanism. I think the bill says that the executive officer may reconsider. I don't think it's actually good governance to have the position that made the original decision hear the appeal. I think there are other mechanisms that could be brought into that that would be much more comforting, and much more good governance, I believe.

Mrs. Witmer: Thank you very much for your presentation, but I think your presentation highlights what this government has been able to do, and that is a kind of a snow job on the people in the province of Ontario. People are very confused as to what is and what is not in Bill 102. Everybody really thinks these two councils are in there, and section 8, there's going to be a wonderful new mechanism.

The reality is that I think there's more confusion today than ever before. There is very little that is clear. There is a tremendous amount of power being given to an executive officer. There will be no transparency. There has been absolutely no transparency on the introduction of

this bill. That's why the public is totally confused. They don't know what's in here and what's not in here. The reality is there is little in here that is going to benefit you or anybody else in Ontario. Most of what happens is going to be in the form of regulation and the public will never see it before the regulation occurs. I would agree with you. We need to define breakthrough drugs. We also need to take a look at how the government will allow for rapid decision-making. We don't know. There's absolutely no process.

The public has been sold a bill of goods. There is nothing substantive here to demonstrate how any of this is going to happen, and I think they need to be ashamed of themselves.

Ms. Groetzinger: We're very aware that a number of policy changes are not in the bill.

The Vice-Chair: Thank you for your presentation.

CANADIAN PENSIONERS CONCERNED INC., ONTARIO DIVISION

The Vice-Chair: Canadian Pensioners Concerned Inc., Ontario division: You have the floor. You have 10 minutes. You know the rules. I guess you've been here many different times, so welcome again.

Ms. Gerda Kaegi: Thank you. I'm here with my colleague, Derek Chadwick. Given the shortness of time—I submitted my brief ahead of time, so I'm hoping you have it—I thought I'd just touch on the recommendations we have made and give a little bit of explanation.

We are very supportive of this bill, and I have read it very carefully. This covers some of the issues we've been fighting about for a number of years.

Let me go directly to our first recommendation and the issue of the formulary and what we call, and many others do, copycat drugs. We support the idea of the advisory committee to evaluate drugs, but hope it will base its recommendations on stringent, evidence-based criteria. New copycat patent drugs must meet new benefit requirements in order to be listed on the formulary. They have driven up the overall cost without really creating new treatments. There are many reports that have testified to this.

The listing of formulary drugs: We believe, as others have argued, that the decisions about listing on the formulary must be readily available to the public on a regular basis.

On recommendation 3 about the executive officer and appeals, we agree with the previous speaker. We support, in principle, the executive officer appointment. Ontario is the slowest of the provinces to approve and get drugs on its formulary. However, we believe that a special appeal board be established that would be composed of an external panel of experts, with very clear criteria for grounds of appeal against its decisions.

Focusing on part I of the bill: On the issue of interchangeability and off-formulary interchangeability, we strongly support this thrust. One of the key issues for us has been the question of evergreening. We believe that's

a good idea, including “similar” or “similar dosage”—those two terms. But in our recommendation 5, we argue that there must be a very careful definition of the meaning of “similar” to ensure that it achieves the intent of the legislation, so we’re calling for clarity on that.

On our recommendation 6, which deals with subsection 4(5), the role of the dispensing pharmacist, we’re a little concerned. We’ve heard the debates between the pharmacists—small independents, large and others—but also we’re coming as seniors. We have some concern about the use of the wording “may” dispense rather than “shall” dispense, if there is a generic available. We thus argue for the stronger word, “shall” dispense, with the protection that the physician may restrict any substitution based on the patient’s need. That’s the case at the moment.

On the issue of rebates, recommendation 7, the term “rebate” must be defined. We totally support the prohibition of hidden rebates, whether monetary or benefits in kind to wholesalers, operators of pharmacies or companies that own, operate or franchise pharmacies. We do not support under-the-table payments, and I mean under-the-table to the public, because we are paying for that.

Recommendation 8: A clear code of conduct should be established for drug manufacturers and those in the distribution and selling of prescription drugs that would clarify what is acceptable and unacceptable behaviour.

Part II, dealing with amendments to the Ontario Drug Benefit Act: Really, we have concerns with the principle. We’re being treated as consumers and taxpayers. Decisions for listing of drugs are to be made on the best clinical evidence available to meet the health needs of Ontarians. We’re citizens; we’re not just consumers and taxpayers. I really resent that reference to us, the public.

Our last recommendation, payment to pharmacies for professional services: We support your recognition, finally, of the additional role for pharmacists under this legislation through additional payments. I’m not impugning the integrity of pharmacists, but we believe that these payments must be for specifically defined services and, as with physicians, subject to surprise audits. Now, it seems to me there’s a potential for abuse, and I don’t believe that physicians or pharmacists would abuse, but unfortunately some do.

Quite frankly, I made a brief. I hope you will have time to read our brief.

The Vice-Chair: Thank you for your presentation. We have some time for questions. Mr. Peterson.

Mr. Peterson: Thank you very much for the clarity of your recommendations. Obviously the ODB affects substantially people you’re representing.

We envision three councils, including a pharmacy council to help us work with the pharmacists to better give care, to ensure that they get fairly paid for the services they’re providing and to work on other things, like the markups and the relationships; we also envision a drug advisory council which will help speed up issues, and we’ll be working with the executive officer to make

newer drugs faster to seniors. I think that your group has been extremely concerned that the new drugs are coming out faster. We’re also conceiving of another council that would allow us to handle appeals when a drug is being approved or not being approved fast enough. That would allow us to have a second look at decisions made, and these decisions would be open and transparent.

Does that seem to work within a framework that you could accept?

1110

Ms. Kaegi: Yes, indeed. It’s the appeal process that I did not see clearly in the legislation, and therefore I’m arguing that that has to be there. I see it as where you’d have a mix of people totally external but who are professional experts in their fields—pharmacists, academic researchers and so on.

So yes, I think the process planned for should be very good. I’m afraid as a political scientist, I know you can’t and don’t want to put everything in the bill. We’ll be watching very carefully as to how these committees are established and how they get appointed.

Mr. Peterson: It’s conceived that at this point—

The Vice-Chair: I’m sorry, Mr. Peterson. Your time’s over. Mrs. Witmer,

Mrs. Witmer: Thank you very much. I do appreciate your presentation. I can see you’ve put a lot of thought into it. You can watch what the government does, but the reality is, by the time they do it, you won’t be in a position where you can make any changes.

You talk about rebates and the cognitive fee. We’re hearing from the pharmacies that as a result of the lack of money that they’re going to receive, about 300 pharmacies are probably going to have to go out of business, some of them in towns that don’t have enough doctors, etc. How do you recommend that pharmacists would be fairly reimbursed in order that we can ensure there’s going to be access to pharmacists throughout the province of Ontario, particularly in rural and northern Ontario? Because without the rebates of \$500 million and with just the cognitive fee of \$50 million, there’s a huge gap there.

Ms. Kaegi: I also live in rural Ontario. I’ve had interesting discussion with my pharmacist, and he says quite frankly they don’t get the rebate. What really makes a difference to them is the quality of drugs they get and all the other things they sell in the pharmacy; that that isn’t the most critical thing. What I said to him—and I’ve spoken to one small independent in Toronto—is, “If your fees go up and if there’s recognition for this extra work and it’s negotiated with the pharmacists in some open way, would that satisfy you?” They both said yes. I’m saying that one is rural, small-town Ontario, 2,500 people. The other one is in the city of Toronto, a small independent pharmacist. So their feeling is, provided that extra recognition of their role is there, they have a belief that there is going to be a better time for them, a better situation for them.

Mrs. Witmer: We have financial analyses that prove otherwise.

The Vice-Chair: Sorry, Ms. Witmer. Your time is over. Ms. Martel.

Ms. Martel: Thank you for your presentation today. You focus on two points. Number one, the government says they're going to establish three councils, and they say that in all their promotional material, but none of this appears in the bill. I do not understand why the government can't put those provisions into the bill. We will have to move amendments in that regard since the government doesn't seem interested in doing that.

My second concern, though, has to do with your part II where you talked about the public as being seen as consumers and taxpayers. One of the concerns I have is paragraph 5, which says that the funding decisions "for drugs are to be made on the best clinical and economic evidence available."

I'll tell you my concern. We've got a lot of drug patients out there who can't get intravenous drugs like Velcade because the government, I think through the DQTC, has decided that's too expensive. The government says that under this bill people are going to get the drugs they need when they need them. But I don't know how people are going to get Velcade, Aviston or other drugs if one of the criteria is economic evidence, because they're expensive, but they're the last resort for many of these cancer patients.

Ms. Kaegi: I understand entirely, and that's why I wanted to change that economic concern that's all the way through the principles, beginning with the first principle, to meet the needs of the citizens of the provinces, not just as consumers and taxpayers. This province is worse than many other provinces. I'm hoping that if we can bring down the cost now of many of the drugs we're getting, we must be able to then put, on as other provinces have done, drugs that will be funded directly by the province.

We have pushed and we've been fighting this issue since 1989 or 1993—

The Vice-Chair: Thank you for your presentation.

ONTARIO HEALTH COALITION

The Vice-Chair: Now we have the Ontario Health Coalition. Welcome. I guess you've been here many different times. You know the rules. You have 10 minutes. If you wish, you can speak for the whole 10 minutes, or you can divide it between speaking and questions and answers. The floor is yours. Can you state your name, sir?

Mr. Eduardo Sousa: My name is Eduardo Sousa and I sit on the board of the Ontario Health Coalition. I'm also the Ontario regional organizer for the Council of Canadians. If there's time at the end, I'll leave further remarks until then, but at this point I just want to say that we support Bill 102. Certainly it could stand for a few improvements here and there, but overall we support the bill and what the government is trying to do through the legislation. I'll leave it there, and if there's time after Natalie speaks, I'll make a few more remarks.

Ms. Natalie Mehra: I'm Natalie Mehra. I'm the director of the Ontario Health Coalition. We too are speaking in support of this legislation, which is unusual for us, and are happy to do so. On the whole, there are some issues and questions that we have, as well as some suggestions and recommendations.

I want to open by noting that there are jurisdictions outside of Ontario that actually do a better job of negotiating prices with the drug industry and of being setters of prices rather than takers of prices. For example, the Australian government manages to negotiate an acceptable price with manufacturers and pay about 10% less than Canadians do for drugs. New Zealand achieved about 50% savings using coordinated bargaining methods. In keeping with those initiatives in other countries, and certainly the new initiatives in Europe to control the cost of drugs, we believe the same must be done here.

We recognize, of course, that there are serious ethical dilemmas that must be weighed carefully in dealing with public policy regarding access to medical treatment. We know there are numerous organizations and individuals advocating passionately for access to particular drugs and treatments that are not currently on the formulary.

We also want to take this opportunity to remind everyone that there are numerous organizations and individuals who have been advocating for particular non-pharmaceutical treatments and care, such as extensions to home care, improvements in nursing homes and access to a comprehensive range of hospital, diagnostic and community care. All this range of the public health system is important.

We're also very aware that the profit-seeking interests of the private, for-profit drug, both generic and brand name, and pharmacy industries are actively lobbying on this bill, so we applaud the courage of the government in grappling with the difficult questions that involve the balance of interests that this policy brings forward. Obviously, in such decision-making, it's necessary to balance the collective good, individual rights and the obligations of government and health providers to protect against harm.

Our approach to the bill is:

—We believe the pharmaceutical strategy must be developed under the principles of the Canada Health Act;

—We support access to drugs with proven efficacy and safety;

—We support access to needed treatments for those with rare and life-threatening conditions, and support democratic accountability and discussion in this process;

—We want to ensure the public interest in protecting the scope of the public health system, including non-pharmaceutical therapies, treatments and care, from being diminished by high drug costs;

—We want to protect against dangerous or unnecessary drugs; and

—We support any steps toward creating a national drug plan for all Canadians, accompanied by the appropriate regulatory regime.

We believe these principles or values should be embodied in the legislation.

Ultimately, we believe this government has successfully achieved a difficult balance regarding these values and provisions of Bill 102, specifically those regarding cost control and access.

We support the widening of the availability of generic drugs, allowing generic drugs that don't have an accompanying brand name drug on the formulary to be listed. We believe this could increase access to bio-equivalent generics and lower costs without harming patients.

We support the widening of what would be considered equivalent, i.e. a pill or a tablet. Again, we believe this will not be harmful to patients, but will lower costs.

In the section on conditional listings versus section 8, as others have noted, there are no details about this in the legislation. We believe the outcome of this initiative depends on what conditions will be placed on getting drugs onto the listings. These must be reasonably rigorous to protect patients, while allowing people with serious illnesses to gain access to life-saving drugs.

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We support the elimination of the rebates to pharmacies. We believe that the government should pay the actual transaction cost for drugs, not more than what the pharmacies are paying. We support the dropping of the price of generics. We support the decrease of the markup.

We support—again, not in the legislation—the creation of best practice prescription guidelines and the increasing representation of patients on councils regarding the formulary. But we think it needs to be specifically stated that any patients' groups that are funded by the drug industry or otherwise supported by the drug industry cannot sit on advice-making bodies for the government.

Additional comments: We know that the brand name drug companies are arguing that generic substitution is bad for health. We know that they're funding certain patient groups to repeat those claims. Medical experts have told us and we have done searches and found that all major credible studies show that this is untrue. Studies in BC of a wider substitution of generics in reference-based pricing show that there is no harm to patients.

Our recommendations:

Money being saved through these measures should be invested in health care and social programs, not used to fund tax cuts.

The creation of the executive officer: To the extent that the creation of this position is about negotiating better prices for drugs, we support it. However, we want to be clear that we believe the decision about what's on and off the listing is a political decision for which there should be political accountability. This provision needs to be clear that the minister or cabinet still maintain full political accountability for the decisions of what are on and off the formulary.

I think I'll end there and turn it over to you.

Mr. Sousa: I had some prepared text, but I think I'm just going to give you a bit of a personal story in thinking about this whole issue. My partner is a breast cancer

survivor. She's 25 years old, and she got cancer at 18. Because of the nature of the cancer and what she's had to go through, she's massively in debt. Her treatment has not been covered. She had to go to Montreal in order to receive further treatment. She is thousands of dollars in debt to pay for her treatment, and she's had to stop going to the University of Toronto. She's already in debt there as well, and part of that has been because of the cost of treatment. Although her case is very complex and this bill wouldn't necessarily completely address that, it would certainly help towards addressing the sort of situation that she and others are in. I thought I'd just throw that in there as well.

I hope that we go through with this.

The Vice-Chair: Thank you for your presentation. We have just two minutes. Mr. O'Toole.

Mr. O'Toole: Thanks very much for your presentation. A couple of things. My role here is to understand. There's a lot that's being talked about that's not in the bill, actually.

First of all, the starting point here is that drugs today aren't covered, basically, unless it's the Ontario drug benefit plan or Trillium. So they're not part of the health care system, and we're all saying they should be. I probably would agree as well, for the same reasons you've described. I think what this bill is doing is creating a two-tier system; even worse, not just generics but the actual brand name drugs. I think there are going to be fewer drugs available and certainly fewer stores.

The other one is the executive officer—

The Vice-Chair: Thank you, Mr. O'Toole. Ms. Martel?

Ms. Martel: Thank you very much. Let me raise two concerns.

Mr. O'Toole: There's no time here for so important a bill—

The Vice-Chair: Mr. O'Toole, please. It's time for Ms. Martel.

Ms. Martel: I would really hope that your girlfriend would be able to have her payments covered, except I look at section 16 in this bill, and I don't see anywhere where the government is making it clear that intravenous drug costs, for example, are going to be considered under section 16. So all those folks out there who have cancer and who are trying to access very expensive intravenous cancer drugs shouldn't look to this bill to provide that for them, because there's nothing in the bill that says that their cases are going to be reviewed or that there's going to be some exceptional circumstance that can apply to get those drugs, like there is for section 8 with oral drugs.

Secondly—

The Vice-Chair: Ms. Martel, thank you very much. Mr. Peterson?

Mr. Peterson: The government is trying to achieve more transparency and accountability by taking the decisions out of cabinet and putting them with the executive officer, whose decisions will be published. Do you see this as a good way of increasing accountability and transparency, by taking it out of cabinet?

Ms. Mehra: No. We believe that the decision about what's on and off the formulary should rest with elected political officials who should ultimately be responsible for those decisions.

The Vice-Chair: Thank you for your presentation. The time is over.

LOVELL DRUGS LTD.

The Vice-Chair: Now we have Lovell Drugs Ltd. Are they here with us? I think we have Rita? Okay. You have 10 minutes. You know the rules. You can speak for the whole 10 minutes or you can leave some time for questions. The floor is yours. Go ahead.

Ms. Rita Winn: My name is Rita Winn. I'm a practising pharmacist, and I'm the general manager and COO of Lovell Drugs.

Thank you for the opportunity to address the committee today. I have a keen interest in the subject of Bill 102, and my intention today is to give a realistic picture of the impact this legislation will have on communities and people throughout the province.

Our company is, first and foremost, about pharmacy and health care. In fact, 93% of our business is from prescriptions and over-the-counter medications. Half of our stores are located in medical clinics.

With roots dating back to 1856, Lovell Drugs is the oldest drugstore chain in Ontario. We're also one of the largest independent chains, still run by the family that helped to found the company. We operate only in this province, and we are a fixture in communities across eastern Ontario, particularly Whitby, Oshawa, Kingston and Cornwall. Lovell Drugs employs 150, including 30 pharmacists and 35 dispensary technicians.

If Bill 102 passes as it is currently written, it will wipe out 100% of our operating revenues—100%. Over time, Lovell Drugs will then simply no longer exist. I will eventually be forced out of business. For me and the 150 Lovell employees that I represent, this is a devastating prospect. But what is more distressing is the impact it will have on the thousands of Ontarians who count on us every day for good health and wellness and, in some cases, life.

I will take a few minutes to list the tangibles that will be taken away from our patients if Bill 102 passes in its current state.

Home infusion program: In the Kingston area, we provide home infusion to approximately 70 patients a week. This program shortens hospital stays, saving hospital dollars. If Bill 102 is implemented as planned without significant amendments, we will not be able to afford to provide this service. The current funding model for home infusion is broken and requires fixing. The proposed loss of the professional allowance will force us to close this part of the business. I understand today an announcement was made on the \$25 cap, but that wasn't in this regulation anyway, or in this bill. The net impact in our area alone will force 70 patients back into the hospital. Is this something the government is prepared

for? Increased patient load, in my mind, increases wait times.

Other services that will be affected by Bill 102 in its present state include the following:

- our methadone program: Lovell Drugs works with the Street Health Centre in Kingston to support methadone patients in a multidisciplinary program, the first of its kind in Ontario. Our program was used by the Ontario College of Pharmacists as the model for the standards of practice to deliver methadone to clinics.

- quick access to information and advice about important health topics, from asthma management to protecting yourself against West Nile virus.

- a medication reminder service to ensure patients take their medication as directed to optimize their treatment.

- pharmaceutical care services, from conducting detailed medication reviews to ensure patients' drug therapy is optimized, conducting patient medication reviews for physicians and providing referrals to other health care providers.

- in 2005, we held 150 clinic days, including such things as osteoporosis screening, heart health risk screening and asthma education. Lovell Drugs administered over 1,900 flu shots last year.

- special care as the result of excellent relationships that we have with physicians in the community, especially in the small clinics that we serve. That interaction is key in avoiding adverse drug events that can lead to more and expensive care.

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- disease-specific patient consultations such as asthma, diabetes, women's health and heart health.

- counselling on over-the-counter medication.

- disease education and prevention programs, including our very own Lovell Drugs heart health program, which gives patients at risk for cardiovascular disease special information on prevention and adherence to their medication.

- counselling on nutritional information for adults and infants.

- smoking cessation programs.

- specialty packaging, especially for seniors who are well enough to stay at home provided they have some help with their medications.

- specialty compounding.

- easy access to the pharmacy outside of regular business hours and on holidays.

- benefits from pharmacy's investment in pharmacist education programs.

- Free delivery service, which is essential to those seniors who live on their own and cannot get out, and those on social assistance who have no transportation.

As you can see, there are many services that we will be forced to review and either change or eliminate as a result of Bill 102. Many of these programs benefit very sick people and very old people. Many interact with us and count on us each and every day. What are they going to do if the care that they rely on every day is going to be interrupted or disappear?

The impact will be significant. Lovell Drugs isn't the only pharmacy that will be forced out of business. Bill 102 will impact every one of the approximately 2,800 pharmacies in Ontario, mostly the independent pharmacies and the smaller chains. Estimates based on the information from the Ontario Chain Drugstore Association and the Ontario Coalition for Pharmacy are that up to 300 pharmacies will be gone.

Over the course of the hearings, the committee may hear different figures being quoted regarding the financial impact on community pharmacy, particularly regarding the prohibition of manufacturers' rebates. It is worth noting that the reason different figures will be used is that the independent and chain pharmacies will be basing it on their own economic models. Rebates vary by pharmacy because they are negotiated between the manufacturer and the various pharmacies themselves. The negotiated rebates are not made public for competitive reasons. However, it is generally agreed by the OPA and the Ontario Chain Drugstore Association, which collectively represent all pharmacies in Ontario, that the \$500-million impact is, at minimum, a very realistic figure.

Throughout this consultation process, the committee will hear from many members of the pharmacy community. You will hear more from specific pharmacies about the actual impact of the provisions in Bill 102, and you will hear many solutions. The Ontario Chain Drugstore Association has developed a series of proposed amendments to Bill 102 that offers an alternative approach to ensure the economic viability of pharmacy but still maintain the principles intended in the government's efforts to reform the drug system: an open, accountable and transparent system.

I appeal to you on behalf of Lovell Drugs' 150 employees and the patients that we serve to listen to pharmacy's concerns and strongly consider them as you make your recommendations to the government on this legislation.

The Vice-Chair: Thank you very much for your presentation. We have two minutes left, so we're going to divide three ways. Ms. Martel.

Ms. Martel: Thank you for being here today. I'm going to focus on your \$25 markup cap, which—you're right—the minister just announced today. You may not have had a good chance to take a look at this, but what difference, if you can give this to us, will that particular change make in your bottom line?

Ms. Winn: I never looked at it specifically on its own; I looked at it as lump in that particular area of our business. It will have a positive impact but certainly will not replace the profit piece that we're going to be missing with the rest of the legislation. I would say it will be a good start, but it certainly won't replace the profit that we'll be losing.

The Vice-Chair: Mr. Peterson.

Mr. Peterson: You say in paragraph 6, "It will wipe out 100% of our operating revenues." Revenues is normally the top line of a financial statement. Do you mean the bottom line?

Ms. Winn: I mean the bottom line.

Mr. Peterson: You mean the bottom. We'll make that correction. Thank you.

The Vice-Chair: Mr. Chudleigh.

Mr. Chudleigh: Thank you for coming and presenting to the committee today. It's extremely helpful to have somebody with your experience and your size of operation to be sitting in front of a committee saying that you are going to go out of business if this bill passes. In your whole life, did you ever expect to be put out of business by a piece of government legislation?

Ms. Winn: Never. I love being a pharmacist, I love my job, I love my company, and that's why I'm here today.

The Vice-Chair: Thank you very much for your presentation.

Interruption.

The Vice-Chair: I want to remind the audience that there is no clapping, please. Thank you.

VILLAGE PHARMACY

The Vice-Chair: Village Pharmacy.

Mr. Dipen Kalaria: Good morning, committee members. My name is Dipen Kalaria, and my associate here is Bill Wassenaar. I am representing a pharmacist who works with HIV patients as a clinical specialist. Today we represent the Village Pharmacy as well as a group of pharmacists known as the HIV Care Pharmacists of Ontario. Together our members represent the pharmacists who treat and care for more than 50% of the sickest patients living with this disease in our province today. Of course, we're here to voice our concerns around many of the facets of Bill 102 as well as the regulations, but specifically for us it's the \$25 cap that will be a showstopper.

Today, the true economics of a pharmacy managing HIV patients and having a \$25 cap would simply mean that you would lose money on every prescription.

Mr. Peterson: Mr. Chair, we are amending the legislation to eliminate the \$25 cap. While we appreciate him addressing that, perhaps he has other topics—

The Vice-Chair: Mr. Peterson, he has the floor. You can ask questions when you have the time.

Mr. Kalaria: That was forwarded this morning?

Ms. Wynne: Yes.

Mr. Kalaria: Okay.

The Vice-Chair: You have the floor.

Mr. Kalaria: I'll admit that my presentation was mostly focused around that, unfortunately, but I can speak to some of the other things in the bill.

Specifically, one thing that has really bothered me since this whole thing was launched a month or so ago was the characterization of rebates as being hidden, non-transparent. They are simply volume rebates. The one thing that I think everybody needs to understand about them is that they do not affect the care or the health of Ontarians. Whether or not we receive a rebate for a given medication, we pick one medication from a list of

generics which is provided to us by the government through the formulary. So whether I get a rebate from one company or not, it would not make a difference to what the patient received. Even if the rebate was eliminated, the patient would still receive one of those five or six medications that are listed on the formulary. It has been characterized in some places as a hidden rebate that seems to compromise the care or the health of Ontarians, but it simply does not do that.

Another facet of this would be the 8% markup. It's very unclear in the legislation currently whether or not Bill 102 will be on the actual acquisition cost that pharmacists pay for medications or on the final cost, which is with the wholesaler markup. If it is with the wholesaler markup, what we'd be looking at, as some of the people here before me have mentioned, is a 2% margin for pharmacies and a 6% or 5.5% margin for wholesalers. I think I'm pretty safe in saying that there is no industry in the world that operates on a margin of 2% at retail when the wholesale margin is 5%. It's simply a flipped equation; it cannot happen.

Let me see if there's anything else besides the \$25 cap that I was prepared for.

I'd also like to urge the committee to consider that the pharmacy council is not yet in the legislation. We don't know what's going to happen. Section 8 has sort of been repealed, but as we've heard already, there's no provision made for it. It has simply been called section 16. Access to drugs for patients quicker is fine, but they still need to occur within the framework of the drug approval process.

I'm free to take some questions.

The Vice-Chair: Thank you for your presentation. Mr. Peterson?

Mr. Peterson: I didn't mean to interrupt you, because we're very interested in your views. We are listening. That's why we've made this change and we're having these committee hearings to look at other possibilities of change. We appreciate it.

The HIV area is probably one of the areas of hidden discrimination in our society. We're very pleased that you're giving so much of your time to addressing that area of great need.

One of the areas where people ask why we aren't putting more of this in the bill—it's because we want to keep the process open and accountable that we're not putting it in the bill. We want to put patients on the committee for drug evaluation. We want them to be part of the process and we want that process to be open and transparent, which it cannot be if it's going to cabinet and it's under government legislation. The last lady failed to understand that. If it's government legislation, it has got to be kept secret as part of cabinet confidentiality.

The members opposite don't trust that open and transparent process to be in regulations and policy. They think it's better to have it ensconced where it can be hidden in legislation. What are your views on this?

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Mr. Kalaria: Well, the concern is that the minister and the government want to involve pharmacy in this

process, but simply alluding to certain things, policy changes and so forth, doesn't give us a lot of comfort in knowing they're actually going to happen. So we would like to see the provisions for the citizens' council, as well as the pharmacy council, directly in the legislation.

The Vice-Chair: Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation. I think what's happened, unfortunately, is there's a lot of confusion between what's actually in Bill 102 and what the government says is going to be happening in the way of policy changes. I think the fact that this morning the minister was forced to back down on the proposal regarding the \$25 is a good indication that if they actually had done good consultation before the introduction of the bill, if they had allowed people the opportunity to see the recommendations and respond, we wouldn't be in the position that we are today. So I applaud you for the work that you do. I think you talked about the need for an appeal process. Do you want to expand on that?

Mr. Kalaria: That is something that I alluded to. Currently, the bill does not provide for any type of independent appeal process. In fact, the only appeal to be made is back to that executive member who will have all the power to begin with. So we really would like a provision for an appeal process with an independent board placed in the bill, rather than waiting for that to potentially happen in the regulations or through policy.

The Vice-Chair: Ms. Martel.

Ms. Martel: I would think it was because of the lobbying that was done by HIV-care pharmacists in Ontario that we actually have a change. The government should have thought about some of these ramifications before they put them in the bill. Secondly, please do not be snowed over or snowed in, or whatever you want to call it—have a snow job done here by Mr. Peterson. You know what? You could put in the legislation that there'll be a pharmacy council, five reps from government, five reps from OPA. There it is in legislation. You can do the same with the citizens' council. This is not a problem and it doesn't have to be done by regulation. The sooner it gets in the legislation, then the more hope we'll have that it's actually going to be here, because I'm not prepared to trust the government on some of these issues; sorry.

Thirdly, with respect to the markup, it would be good if you could reiterate again the problem with the markup. I got some information from one of your colleagues, Mr. Somani, from the Village Pharmacy about three weeks ago and I read this into the record, but perhaps you could give us an example again of what this means and what the dilemma is, because I'm not sure all committee members understand that.

Mr. Kalaria: Okay. The current dilemma is that in order for a pharmacy to purchase medications, they can either purchase them directly through the manufacturer or through a wholesaler. Unfortunately, over the last few years, the manufacturers have made it increasingly more difficult to purchase from them. They have very high minimums—\$5,000, \$10,000, \$15,000, \$25,000 minimum purchase—so we have to basically acquire our medications through the wholesaler, who charges a 5% to

6% upcharge for the service. The government pays us the markup on the back price, and the back price is of course the best available price as published in the ODP formulary. That usually refers to the price from the manufacturer, which unfortunately is just not possible for most pharmacists to get. As a result, we collect the difference in markup of just maybe—well, right now it would be 3.5%, but with the new legislation, that would be 2.5%. Simply put, on expensive medications, this would just not be economically feasible for pharmacies to stock expensive medications. In some cases, a margin like that would just mean pharmacies going out of business, as my previous colleague here mentioned. I really do believe that pharmacies will close if that happens.

I think it was 20 years ago that the government decided that reducing the number of physicians in this province would save them money. You will have an exodus of pharmacies, and 20 years from now we'll be trying to replace pharmacists in this province, if this bill goes through as it is.

The Vice-Chair: Thank you for your presentation. Your time is over.

MAIN DRUG MART

The Vice-Chair: Now I'm going to call on Main Drug Mart. You know the rules. You have 10 minutes to speak. If you wish, you can speak all the time, or you can divide it between questions and answers and also your speech. Can you state your name, sir, before you start, please?

Mr. Nagy Rezkallah: Sure. My name is Nagy Rezkallah, and I am a pharmacist and co-owner of three Main Drug Mart stores in the Metro area that have 38 employees.

I am here as an Ontario citizen who cares not only for his own business but also for his fellow citizens. I understand that democracy brought me here to express my concern and I understand also that the same democracy is able to amend any given proposal.

Apart from filling and counselling on any filled prescription, we have other services that we provide free of charge, and those services are all supported by the generic allowance we get. For example: (1) diabetic education, one-on-one with glucometer use and managing diabetes; (2) blister pack or dosette for nursing homes, elderly and confused patients to make sure they take their medication correctly, which saves the taxpayers unnecessary expenses by avoiding hospitalization and home care. I brought one with me. You don't know it. This is how it's done. It takes at least 30 to 45 minutes to do one of those, and we provide those free of charge because I get my expense from the generic allowance. If I don't have that allowance, I'm not going to be able to do that anymore; there is no way.

Drug reviews, meaning we sit with the patients, we check all their medications and design an administration plan; also check side effects, drug interaction and drug duplication, which we have to correct. That arises from

the shortage of family doctors and more and more people with more prescriptions coming from walk-in clinics.

A pharmacist is the only health care professional available to help a patient with easy and free access for consultation, avoiding unnecessary doctor visits.

Once Bill 102 is passed with no change, I will have no choice but to do the following: (1) staff will be laid off; (2) the pharmacy will have to cut down its hours, leaving the patient with no health care except to visit more emergency rooms and doctors. Services will have to be cut back—for example, blister packs, which I showed you, which will lead to more hospitalization and home care visits. There will be less consultation with pharmacists and there practically will be no consultation at all. Patients will have less accessibility to expensive drugs, like HIV and cancer drugs—and I'm glad to hear that that has been solved this morning. Still, I will have to see the details of how it is going to be done, by removing the cap of \$25 on the prescription. But this is a very good step as a start.

Nobody can dispute that our government needs to control costs of medication. The majority of the money spent on ODB drugs, as I understand, comes from brand name drugs. I agree with Bill 102 to allow me, as a pharmacist, to switch prescription drugs from more expensive ones to less expensive generics.

If I may suggest, once a generic is available, delist all alternative brand names in the same category. This will save lots of money. Also, cut the cost by cutting the waste, and there are so many ways to do it.

I would like to stress that the generic allowance is also to compensate me for the markup I am not getting paid from the government and other third-party payers. I have two examples of that. This is how we get paid. For example, Lipitor. According to the May 28 Toronto Star, Lipitor is the number 1 drug dispensed in Ontario. A three-month supply costs me \$208. The ODB—the government—pays me \$217. That leaves me with a gross profit of \$9, which is a gross profit of 4.3%. Another example is Zyprexa, which is the number 5 dispensed drug in the province. The pharmacy only gets 1.9% in gross profit—not net profit; it's gross profit.

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I cannot emphasize more the importance of a generic allowance to compensate for all the unpaid markup. The generic allowance is not to make us rich; the generic allowance is to make us able to pay our wages, our rent, taxes, counselling and every single service that we give to the patient free of charge.

A dispensing fee of \$6.54, which is proposed to be increased to \$7, does not come close to matching even the rate of inflation in the last 16½ years. The markup of 8% that is going to increase to 10%: From the example of Lipitor and Zyprexa, it does not really exist in real life. We don't get 8% or 10%. How can we be in business? Because of the generic rebate that we get.

I appreciate you giving me the opportunity to voice my concerns. I trust you will take them into consideration. Thank you.

The Vice-Chair: Thank you very much for your presentation.

You have one minute, Ms. Witmer.

Mrs. Witmer: I hope that the government will seriously consider the impact that this bill and the policy intentions are going to have on people like yourselves who are doing an outstanding job of providing services to the people in this province, and I just hope they will listen. I wish they had listened before they introduced the bill—and certainly the consequences are going to be tremendous. Thank you so much.

The Vice-Chair: Thank you very much, Ms. Martel.

Ms. Martel: Thank you for being here this morning. I appreciate you listing those services that you provide as a result of the generic allowance. I think it is important for us to see where that money is going.

Secondly, I would agree with you, because I've heard from other pharmacists that in light of declining revenue in other areas in terms of dispensing fees and the actual costs versus what you are getting, the educational allowance has become part of a revenue stream in many pharmacies that allows you to survive. Is that true?

Mr. Rezkallah: Yes, absolutely.

The Vice-Chair: Mr. Peterson.

Mr. Peterson: Thank you for pointing out the exact details of the gross profits here. Basically, what you're detailing is how the gross profit has been eroded by the drug companies' increasing prices. The government could not respond to those increasing prices other than by delisting, so our hands were tied. Under this new legislation, we are trying to fix that gross profit so your gross profit will not be eroded.

Mr. Rezkallah: What I mean: I can take anything, like Zyprexa and Lipitor, but I am only in business because I'm getting the unpaid markup on those drugs from the generic rebate that I get—and this is my best store. This is the financial statement. Last year I had a profit of \$150,000—

The Vice-Chair: Thank you for your presentation.

Mr. Rezkallah: I believe that without the generic, I would have had a loss of \$80,000.

The Vice-Chair: Your time's over, sir.

Mr. Rezkallah: This is my best store.

The Vice-Chair: Okay. Thank you very much for your presentation. There is no more time left.

ONTARIO LONG TERM CARE ASSOCIATION

The Vice-Chair: I want to call on the Ontario Long Term Care Association to come forward. You have 10 minutes.

Ms. Nancy Cooper: Good morning. I am Nancy Cooper, director of policy and professional development at the Ontario Long Term Care Association. With me is Bill Dillane, president of OLTC.

We appreciate the opportunity to present to you today. OLTC represents the private, charitable, not-for-profit and municipal operators of 428 of the province's 630 long-term-care homes. Those homes care for 50,000 of

the 75,000 Ontarians in long-term care. This care includes ensuring that residents, who are typically in their mid-80s, safely get the 7.5 daily medications they now need to manage their complex medical conditions.

The critical role of pharmacies in this process is what brings us here today. We applaud the government's leadership in attempting to control escalating drug costs with Bill 102. We are concerned, however, over the potential of Bill 102 to impact the valuable and value-added service that pharmacies provide to long-term-care residents.

Our concern stems from two sources: first, subsection 11(2) of the bill, which states that, "The executive officer may pay the operator of a pharmacy an amount different from the amount provided for under section 6 in respect of a claim or claims under subsection (1) for prescribed classes of eligible persons, subject to any prescribed requirements." Secondly, government statements surrounding the introduction of Bill 102 clearly indicate that a new payment model for long-term-care pharmacies is a government priority. In the context of the proposed legislation, we understand that this could result in an entirely different pharmacy reimbursement model for pharmacists providing services to long-term-care homes.

In the combination of this bill and the government's stated policy priority, we fear either a reduction in the overall funding available to support the delivery of high-quality pharmacy services to long-term-care residents or a shifting of the costs of this service.

To understand our concern, it is necessary to view the current reality of pharmacy services in long-term-care homes. It is a reality that the existing compensation and operating framework encourages healthy competition and supports pharmacists to be active partners in resident care, provides pharmacists to enable the home to meet provincial regulatory requirements and national accreditation standards, and provides value-added services that advance the quality of resident care everywhere from reducing the risk of human error to reducing drug usage, including psychotropic drugs and chemical restraints.

Currently, this service in long-term-care homes is fully funded by the Ontario drug benefit program, or ODBP, with the exception of a modest \$2-per-month resident copayment.

The Ministry of Health and Long-Term Care does not fund pharmacy services as part of the care program that it defines through the nursing and personal care and the programs and support services envelopes, yet these services are an important part of the resident care program that homes are required to deliver.

All long-term-care homes must meet the over 400 service standards set out in the ministry's program standards manual, including providing pharmacy services that meet eight specific standards and 29 defined criteria. The program defined by these standards is significantly broader than simply filling prescriptions. It also requires that pharmacies provide services such as:

—clinical pharmacology, which includes participating with physicians, nurses and others as part of the interdisciplinary team;

- support for the home's therapeutic quality and risk management programs, including medication reduction programs;

- leadership in drug safety programs, including initiatives to reduce the risk of medication errors;

- maintenance of medical administration records systems;

- education for staff, residents, families and professionals; and

- safe and effective transmission and recording of medication orders and prescriptions.

These prescriptive requirements describe a comprehensive and valuable resident care program by anyone's definition. Yet they only begin to describe the added value that, in tandem with the current ODBP funding structure, fosters safe and effective resident care. It's that world of difference between being a service supplier and being a service delivery partner on the care team.

The current ODBP provides sufficient funding for pharmacies to deliver the complete program that homes require while encouraging them to become active partners on the home's care team. The beneficiaries of this funding model, with its inherent competitive focus, are the residents and the homes, as demonstrated by the following examples.

As I noted, there are 75,000 residents in Ontario's long-term-care homes, with each resident taking an average of 7.5 medications daily. This amounts to over 205 million medication administrations in a year. Yet in 2004, ministry unusual occurrence data showed that there were only 44 adverse drug incidents that resulted in the transfer of a resident to a hospital, for a rate of two millionths of 1%. Obviously, the goal is zero. Nevertheless, it is clear that the current program model provides strong support for the prevention of adverse drug incidents.

The sheer volume of this medication activity in long-term care alone suggests a high potential for human error, a risk that is actually enhanced by the care environment. Unlike hospitals, where the patient is normally in bed, a long-term-care resident could be anywhere in their home. They could be doing a therapy program, getting their hair done or visiting with family. The registered staff must not only find the resident but, while they are searching, they are also likely to be called upon to respond to a family question or to redirect a resident with dementia to find their own room.

The current program supports pharmacies as active partners in helping registered staff to effectively manage the risk for human error through drug safety programs and other initiatives.

In this context, you can see why we would be concerned with subsection 11(2) of this bill, particularly when government has indicated that long-term care is up for potential major changes to our pharmacy service reimbursement model.

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As MPPs, you are all aware of the current funding circumstances in our sector and the need to provide more

direct nursing and personal care to residents. Shifting pharmacy costs to long-term-care homes would be unacceptable to OLTCA, our member homes, staff, residents and their families. If this occurred, we would expect the government to fund homes for these costs.

We appreciate that there may be alternative reimbursement models that could also support the government's objective. In fact, we would be more than willing to work with government, pharmacies and others to explore these.

We don't believe, however, that a capitation model which also has the impact of removing healthy competition amongst pharmacies is one of those options. This belief stems from our experience in the recent past with respect to medical laboratory services. Under their previous funding model, medical laboratories provided phlebotomy as a value-added service to long-term-care homes. When government moved them to a capitation model, it was no longer possible for the laboratories to cover this cost. Homes and the ministry were left scrambling, and as a result the government had to end up funding homes to access phlebotomy services.

A similar example in the current context might be the medication carts that pharmacies have always provided to homes as a value-added service. This value is increasing through the pharmacy sector's commitment to invest in electronic records and smart technology. For example, many homes are now supplied with wireless electronic medication carts. These carts provide increased support in managing the risk of human error by making it difficult to distribute the next medication if the medical administration record for the previous one has not been signed.

The benefits that accrue to residents and staff from these advances in technology would likely not exist without the support provided by the current ODBP-funded pharmacy service program.

Today, we are asking for your support to ensure that this important legislation does not negatively impact access to quality pharmacy services in long-term-care homes. Specifically, we are requesting your support to ensure that government maintains an appropriate payment model that fairly compensates pharmacies for all the services provided to long-term-care homes and continues to encourage healthy competition amongst pharmacy providers to ensure value for this investment.

Again, thank you for giving us the time to raise our concerns with you today.

The Vice-Chair: Thank you very much for your presentation. There's not much time left, about 20 seconds. I guess we don't have time to ask questions. Thank you, again.

MOOD DISORDERS ASSOCIATION OF ONTARIO

The Vice-Chair: I want to call on the Mood Disorders Association of Ontario, if they're here. You know the procedure. You have 10 minutes to speak. If you wish, you can speak for all of them, or you can divide them

between speaking and questions and answers. The floor is yours. You can start whenever you're ready.

Ms. Lembi Buchanan: Mr. Chair, committee members, thank you very much for this opportunity.

My husband, Jim, and I are among the lucky ones. Innovative drug treatments have not only kept us alive but they have also provided us with a high quality of life. And for those of us who have been diagnosed with life-threatening illnesses such as bipolar disorder, also known as manic-depressive illness, and cancer, quality of life is everything. In our case, quality of life can be bought for an extra \$2, and I'll explain that later.

I'm presenting on behalf of the Mood Disorders Association of Ontario, which provides services to approximately 10,000 individuals across the province. Jim has been a director of the organization for many years, and I'm a member.

The Mood Disorders Association of Ontario supports the government's decision to reform the Ontario drug program to ensure its sustainability, and we have been involved in the consultations with the Drug System Secretariat from the start. We were extremely pleased when George Smitherman, Minister of Health and Long-Term Care, introduced the Transparent Drug System for Patients Act in the Legislature. However, we were deeply disappointed to discover that most of the proposed recommendations are not included in Bill 102, and Shelley Martel has already gone through that list.

There is no mention of a "citizen council." There is no mention that patients will have "an active role in both decision-making and policy setting" etc. I'm not going to reiterate them all.

What I would like to talk about is that there's no definition of "similar" when referring to active ingredients or dosages of medications. At the present time, generic drugs must have the same active ingredients in the same dosage as patented or brand name drugs. There is a grave danger by suggesting that drug products with similar active ingredients are as safe as drug products with the same active ingredients.

I am sure that everyone is familiar with Aspirin, Tylenol and Advil. You can come and see me later if you've had a hard morning, because these packages have not been opened yet. I'm sure everyone here is familiar with them. It's easy to suggest that they are similar since they are all painkillers. They even belong to the same therapeutic class of drugs. But they are not the same. They have different chemical structures. They work differently for each individual. They have different interactions with other medications. While one or two of them may be safe for an individual to take, another can cause harmful side effects or even death.

In recent years, Health Canada has approved three new antipsychotic medications for the treatment of bipolar disorder and schizophrenia. They are chemically distinct. They target different chemical imbalances within the brain, resulting in different clinical outcomes. Nevertheless, some provinces have decided that the three new antipsychotics are similar—as these are similar—since

they are in the same therapeutic class; and therefore they're interchangeable. As a cost-containment measure, the provinces have restricted access to the antipsychotic costing them the most money. A patient must fail first on the other two medications before a doctor can prescribe the costlier drug.

Restricting access without regard to the health outcomes of each individual patient is bad public policy. Preventing a physician from making choices based on a professional clinical assessment is unethical. If treatment fails, the chance of recovery for individuals with mental illnesses diminishes significantly.

If we were to take these drugs—let's say they all have to be prescribed by the doctor. If Tylenol is the most popular drug, for whatever reason, Tylenol is going to be higher on the list of the drug costs to the province. So the province can say, as some provinces have done with the antipsychotics, "This one is too expensive. We don't know whether it's more popular because it works better or people just take more of it, whatever reason, but we'll take this off the list, and patients have to try these two first." Of course, a child can't take aspirin because of Reye's syndrome, so we're left with one. What kind of health care system is this when we have three very good choices out there and we start taking one or two off? The difference in the price of these things is just pennies, as we all know. The difference in the average daily cost of the three different antipsychotics is just a little bit more than a cup of Starbucks coffee. So we're playing with people's lives with minimal-cost medications.

I would also like to point out that the word "same" already allows considerable leeway for pharmaceutical companies when producing generic products. For example, generic drugs must be effective within a 20% range of the original patented or brand name drug. This means that they may be 20% more effective or 20% less effective than the brand name.

My husband, Jim, doesn't have faith in generic products to begin with. He doesn't believe that they are as effective as the original brand name drugs. Whether or not Jim's position is reasonable, the key here is to ensure that he, like others with serious psychiatric illnesses, is compliant with his medications. If Jim believes that the original patented drug is better, than it is critical that he has access to it.

Fortunately, psychiatric medications are inexpensive when compared to the cost of HIV drugs and many cancer treatments. In fact, Jim's mainstay, Carbolith, is cheap. However, Carbolith, the brand name for lithium carbonate, is not included in the formulary because there are even cheaper substitutes. A 300 mg capsule of Carbolith costs nine cents, and the generic form only costs six cents. The difference works out to less than \$2 per month, and yet the Trillium drug program refuses to cover the extra cost.

Jim was diagnosed with bipolar disorder in 1973, when he was discovered on the roof of St. Patrick's Cathedral in New York City in a psychotic state, waiting for a helicopter to take him to God. At the time, Payne

Whitney, a leading psychiatric hospital in New York, was conducting clinical trials with lithium. Jim responded well to the treatment and has continued to take Carbolith for more than 30 years.

Regrettably, due to the severity of his illness, he has suffered a number of setbacks requiring lengthy hospitalizations. When he was hospitalized again in 2001, he refused to take the medications provided by the hospital pharmacy because the generic drugs looked “different.” This is not an uncommon reaction. Many psychiatric patients, like Jim, have been prescribed powerful psychotropic drugs that have caused harmful side effects. So it is hardly surprising that they view drugs that are “different” with suspicion.

According to the hospital report, the issue was eventually resolved after transferring Jim to the acute care unit. He had demanded access to his own medications and, when his behaviour became aggressive and threatening, Jim was designated as an involuntary patient and put under 24-hour surveillance. The routine substitution of a generic product for a brand name drug greatly exacerbated his condition, resulting in a longer hospital stay.

There is also a danger in suggesting that drug products with a similar dosage are as safe as drug products with the same dosage.

How much time do I have?

The Vice-Chair: You have 30 seconds.

Ms. Buchanan: So you have the information in front of you in terms of how just a very tiny, tiny amount—relatively tiny amount—of an antipsychotic can make a huge difference in whether he’s going to cause harm to himself or others because of his sleepwalking incidents.

The Mood Disorders Association of Ontario is concerned that the quality of patient care will be compromised by cost-containment policies that create a lower threshold for therapeutic substitution of drugs. Thank you.

The Vice-Chair: Thank you for your presentation.

I believe we’ve now listened to all the people listed for our morning session, so now we’re going to recess until 3:30 or right after question period. I’m going to ask the committee members to take their stuff with them, because it’s going to be a long recess. We’re not going to come back until 3:30 or right after question period, roughly about 3:30 to 4 o’clock. Now we are recessed.

The committee recessed from 1211 to 1532.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I’d like to call the committee back into session. As you know, we are here to deliberate on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act.

We’ll move immediately to our presenters. First of all, welcome to you all. Thank you for attending. There is an overflow room, apparently, next door—which is much cooler, I’m informed—for those who would like to view these proceedings. I would also respectfully request that our presenters, as well as all committee members, abide by the rules. We have, obviously, a great deal of interest in this bill, and we need to keep the timings very firm.

PHARMASAVE DRUGS

The Chair: With that in mind, I would invite our first presenters, from Pharmasave Ontario, Messrs. Cheung, Rajesky, Zawadzki and Sherman. I invite you gentlemen to please come forward. Identify yourselves, please, for the purposes of recording on Hansard, because everything you say, as you know, does become part of the official record. Your very firm 10 minutes begin now.

Mr. Billy Cheung: Hi. Thank you very much for this opportunity to communicate our concerns regarding Bill 102. My name is Billy Cheung. I’m a practising pharmacist as well as region director for pharmacy and operations for Pharmasave. With us today as well are Allan Rajesky, national director of pharmacy innovation; Peter Zawadzki, our manager of pharmacy innovation; and Doug Sherman, our general manager for Pharmasave Ontario.

First off, Pharmasave is made up of a group of independently owned stores that share the same name. We have 370 stores nationally and 130 stores in Ontario. We’re primarily located in rural and small communities. Our organization exists to ensure that independent pharmacy remains a viable and successful option for pharmacists. Each one of our stores is 100% owned by pharmacists who decided at some point in time to take a risk, start their own small business and build their own vision for how they want to practise pharmacy.

Pharmasave provides services to these pharmacists. We provide the tools and the training, and this helps our pharmacists differentiate how they provide patient care services in the community. As you can see from the sales mix on your slide there, our focus is pharmacy. We’re very pharmacy-focused. Most of our business comes from the pharmacy as well as the OTC side of the business.

We are a different type of drugstore. Most recently, we successfully published a heart health study showing that our pharmacists can decrease the risk of heart attack and stroke by 30% in the community through enhanced management of people’s heart health risks. We do thousands of health information clinics and presentations across Canada each year. Another example of our success as a unique pharmacy is that, just last week at the Drugstore Outstanding Service Awards, Pharmasave won five of the seven awards. Our focus is on enhancing patient care in the community.

In terms of our structure, we have no retained earnings. Pharmasave Ontario operations are all supported and funded by our member pharmacists. In other words, our operations’ support and training resources are all financially funded. Our national office is responsible for providing the development of programs and resources, and our regional office is responsible for the execution and assisting our stores in terms of providing these services to the community and to enhance patient care. We’re a very grassroots-driven organization.

As indicated, our model is based on pharmacy first. In terms of revenue, we generate our revenue through a

number of different areas from prescriptions: dispensing fee, markup, and manufacturers' allowances. As you're all aware, you'll see that the costs related to operating a pharmacy—things such as wages, rent and utilities, dispensing and operational costs—have continued to skyrocket and increase over the last 15 to 20 years. That being said, dispensing fee and markup have actually remained flat and, in some cases in terms of the markup, we've seen a decline in terms of that piece. What we're seeing as a result is that manufacturers' allowances have allowed us to subsidize our business to ensure that we can provide value for the money in terms of what the government spends, what patients spend and what third parties spend with respect to prescriptions. We've maintained our pricing because we've had those allowances in place.

The next chart is just another way to show how manufacturers' allowances have allowed us to fill that gap. Without that gap, what you'll see is the impact that we've seen on Pharmasave. We've done the analysis based on what we know of the current legislation and how it's written. What it means is it's a negative \$17.4 million to our bottom line. That represents 76% of our bottom line. As you might expect, it's very difficult for our company, our stores, to continue our operation in the way it is with that type of impact. In Ontario, a specific loss of \$159,000 per store is what we're seeing; again, the majority of their bottom line.

Even if we take the best-case scenario and take into account some of the things that have been in the proposed regulation, such as the rebate allowances, the ODB fee going up to \$7, the reduction in markup as well as the professional services fee and the generic pricing rule, we're still seeing a negative \$16 million for our stores. It's very significant. We've actually not even taken into account the markup cap of \$25 because we would assume that our pharmacies would not fill those prescriptions that we'll lose money on.

In terms of the actual impact on Pharmasave, we're going to see a number of different things occur: 20 to 30 Pharmasave stores are going to close in Ontario; job losses will occur in every single one of our stores; 10 to 15 staff will be cut at our Ontario office, and we only have 23; service hours will be reduced in most of our stores; and services and support to stores will be significantly reduced, which include things such as training, patient education materials as well as professional programs.

For patients, what this translates into is increased wait times to get their drugs and less pharmacy access, resulting in increased visits in walk-in clinics as well as hospital emergency rooms. There will be no access to high-cost drugs such as those for cancer and HIV, although we hear that that might have changed as a result of an announcement today. Copays will be charged, with absolutely no exceptions. Patients will have to go further to get their drugs through decreased accessibility.

We're going to see services offered by our Pharmasave stores that will decrease. These include things such

as home infusion, palliative care as well as long-term care. They will no longer make economic sense. There will be the elimination of patient education seminars, clinics, flu shots, blood pressure checks as well as extended pharmacist consultations due to the lack of staffing that we would have. There will be higher fees for anybody non-ODB. Our stores are going to have to figure out another way to make up some of those economic losses. Services usually covered, such as tablet splitting, delivery and compliance packaging, will have new or increased costs associated with them. The impact is dramatic. The net result is that independent pharmacy will have a very difficult time remaining viable with this new model that's being proposed, and patient care will be affected.

What we're saying is that Bill 102 does not allow the current model to evolve. It's expecting a complete change to the business as of October 1, 2006. It's very difficult, when a business is going to lose 76% of its bottom line, to suddenly change overnight.

1540

We fully support the recommendations and amendments put forward by the Coalition of Ontario Pharmacy, which you'll be hearing from, OCDA, CACDS and the Ontario Pharmacists' Association. We would really like you to seriously consider fixing Bill 102, looking at manufacturers' allowances to be allowed as well as written into the bill with a code of practice, and that the pharmacy council and citizens' council also have the ability to negotiate, this as well being written into the bill. We'd like you to fix Bill 102 to ensure the sustainability of community pharmacy and the pharmacists' ability to provide patient care.

Thank you. We'd be happy to take some questions at this time.

The Chair: Thank you, and with respect, we'll have about a minute for each side, beginning with the PC side. Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation. I appreciate all the work that you've done on behalf of pharmacy and pharmacists in the province of Ontario. You've got some great data here.

I want to go into the copayment issue, because I don't think it was until just recently that patients became aware of the fact that this bill is going to have even more severe consequences than they had initially heard. Can you tell me what's going to change?

Mr. Cheung: With respect to the copayment, in some cases you have pharmacies that are compassionate for patients who can't afford the copayment, and they've been waiving some of those fees. What we see at this point in time is that, with the changes in this bill, pharmacies are going to have to charge those copayments, with absolutely no exception.

Mrs. Witmer: So no one will be exempt?

Mr. Cheung: No one.

Mrs. Witmer: And that could range in what size? What costs per prescription might that be?

Mr. Cheung: The copayment would include the \$2 copay that currently patients might not be paying—the \$6.11 copay that people might only be paying \$4.11 on at the current time—and any third party payers, differences in fees—

The Chair: Thank you, Mrs. Witmer. We'll move to the NDP side, Ms. Martel.

Ms. Martel: Thanks to all of you for being here. Earlier this afternoon, the minister said yet again in the Legislature that this bill is going to enhance pharmacy and pharmacists, especially in rural areas. He was on the public record again today. I've got in front of me your presentation, which talks about significant losses. What do you think about what the minister had to say?

Mr. Cheung: I agree that there are parts of it that are intended to enhance the role of the pharmacist. Our challenge is that we might not have pharmacists available to actually take on that type of role.

Ms. Martel: So you are pretty confident about the numbers that you've given to us as a committee, given your roles as pharmacists. Having looked at the bill, you are very confident that these numbers are the ones you're most concerned about if nothing changes.

Mr. Cheung: We know our numbers. We know our business. We've done the analysis. We have a significant concern regarding the devastation this can cause us in our business.

The Chair: Thank you, Ms. Martel. We'll move to the government side. Mr. Peterson.

Mr. Peterson: The rebates that you're talking about—people have said that they're within a certain range. What is your knowledge of the size of the rebates? Where do you fit in the supply chain? Are you the second-biggest, fifth-biggest, 10th-biggest buyer in Canada?

Mr. Cheung: We are currently the fourth-largest pharmacy chain in Canada. With respect, I can only speak to our business. Our business is made up of independent owners, so we don't have all the data from every one of our stores, but as I indicated, there is a loss of \$17.4 million as a result of these changes.

Mr. Peterson: But what percentage of purchases is that?

Mr. Cheung: It would range anywhere between 45% and 55%.

Mr. Peterson: Forty-five per cent to 55%?

Mr. Cheung: And that's not an exact number, because it could depend store-on-store, but it gives you a range there.

Mr. Peterson: Thank you.

The Chair: Thank you, gentlemen, for your deputiation on behalf of Pharmasave.

MEDICAL REFORM GROUP

The Chair: I now invite our next presenters, from the Medical Reform Group, Mr. Lexchin and Mr. Kalant. Gentlemen, please come forward. You've seen the protocol: 10 efficient minutes in which to make your pres-

entation. Please identify yourselves for the purposes of recording. Your time begins now.

Dr. Joel Lexchin: I'm Dr. Joel Lexchin. I'm an emergency physician at the University Health Network. With me is Dr. Norman Kalant, who's a retired physician from McGill. We're members of the Medical Reform Group, a group of about 200 doctors that has been active on health care issues for the past 25 years.

I'm going to address two issues. The first one has to do with the question of substitution that the bill deals with, and the second one has to do with the viability of the brand name pharmaceutical industry.

For the first issue, my background is quite relevant here. In fact, the background of the Medical Reform Group is quite relevant because we, as doctors, would not support changes to legislation that endanger people's health.

My personal background is that I am one of the authors of a couple of books of prescribing guidelines for doctors. One is called *Drugs of Choice*, which is for general practitioners. The second is *Drug Therapy for Emergency Physicians*, which is obviously for emergency physicians.

There's concern regarding the legislation, in terms of generic substitution going from "same" to "similar," that this would lead to problems with patients who are stabilized on one medication getting inadequate therapy is they're switched to something that is similar rather than the same.

Having written guidelines for doctors, I can say that in groups of drugs there is a fair amount of medical consensus that switches like these would not have any significant impact on patient health. That's not to say it would never happen, but it's very unlikely to happen.

You can look at wider instances of substitutions. In British Columbia they have therapeutic substitution. They take a category of drugs that are all considered basically the same in terms of safety and effectiveness, and the government will only pay for the least costly version in that group unless there's a genuine therapeutic need for a more costly version.

At least three or four studies have been done looking at the health outcomes based on therapeutic substitution—that is, actually substituting one drug for another—and there is no evidence from these studies to show there has been any negative health outcomes in patients as a consequence of this.

What Ontario is proposing in going from "same" to "similar" would be going from getting a pill to getting a tablet. The chances that this is going to have any adverse health outcome are quite minimal. As I said, this is speaking as a group of doctors and myself as somebody who writes guidelines for prescribing for doctors.

The other issue I want to touch on is the viability of the pharmaceutical industry; again, this is the brand name industry. There has been a lot of rhetoric coming out around this—how it would threaten investment in Ontario.

Just for a bit of historical context, go back 35 years to when Manitoba introduced its drug insurance plan and

formulary, and read the same kinds of threats being made in Manitoba: If Manitoba did this, the pharmaceutical industry would have to look seriously at whether it would supply drugs to that province.

Forward to the present time, whenever something comes up that the industry doesn't like, they make the same kinds of threats around pulling investment out of the country. Those threats are largely hollow. If you look at the profit rates of the pharmaceutical industry currently compared to all manufacturing industries—this comes from Statistics Canada data—what you see is that in the last year for which there were figures, which I believe is 2003, the industry was twice as profitable, as a return on shareholder equity, as all manufacturing industries.

So none of what has currently been done in Canada—federally in terms of price controls through the Patented Medicine Prices Review Board, provincially with the price freezes on the formulary here in Ontario and the bargaining that the government undertakes when it's going to list a new drug—has adversely affected profitability in the industry. There's no reason to think that what is going on would affect profitability. The industry is making these threats. Largely it's a hollow gesture.

Finally, there's the question the industry is talking about around research and development and how much it will or will not continue to invest in this province. For that, I'll turn to Dr. Kalant.

1550

Dr. Norman Kalant: A colleague and I have been studying the productivity of the R&D expenditures claimed to be made by the pharmaceutical industry. Before the patent law was passed in 1993, the industry argued that it needed more patent protection to increase its revenues and thus have more money for R&D expenditures. In fact, although R&D spending has increased subsequently, there has been no increase in the number of new drugs introduced by the Canadian industry.

We used a number of scientific publications and a number of patent applications as outputs of their research to compare the Canadian subsidiaries with their own parent firms in the United States. Our firms produced far fewer outputs per million dollars of R&D expenditure than the parent firms. This was not due to the small size of the subsidiaries and the low level of their R&D expenditures, since one company was an exception to the pattern, and that was Merck Frosst, which had an expenditure at about the same level as all the other subsidiaries and yet produced numbers of scientific publications and patent applications per million dollars of R&D comparable to its parent in the States.

To see if the R&D funds were being used to support research in academic institutions—universities and hospitals—we examined a random sample of scientific reports from scientists working in those milieus. Out of a sample of 100 publications, we found none that claimed to have support from the Canadian pharmaceutical industry.

So, if the R&D expenditures do not produce new drugs or new knowledge expressed as scientific public-

ations and patents, and they do not support academic research, where is the R&D money going? I think this is an important question that has to be answered in the Canadian context, and adds a reason to question the threat from the pharmaceutical industry that they will withdraw from Ontario if this bill is enacted. If they do withdraw, there would appear to be not much loss to Ontario.

Dr. Lexchin: That is the formal presentation.

The Chair: Thank you, gentlemen. We have 20 seconds per side. Ms. Martel.

Ms. Martel: Some other presenters have suggested that we need a definition for “similar” with respect to this bill. Can we get your view on that?

Dr. Lexchin: I would say that “similar” would be the same active ingredient in two different drugs with the consensus from the medical community that it produces the same clinical benefits.

The Chair: Thank you, Ms. Martel. The government cedes its time to you, Ms. Witmer—

Mrs. Witmer: No questions.

The Chair: Thank you, Drs. Kalant and Lexchin, for your deputation and your presence today.

PFIZER CANADA

The Chair: I now invite our next presenter, Monsieur Jean-Michel Halfon, president of Pfizer Canada. Monsieur Halfon, please be seated. You've seen the protocol. We invite any colleagues of yours to introduce themselves for the purposes of Hansard. I invite you to begin now.

Mr. Jean-Michel Halfon: Thank you very much. Joining me today are Guy Lallemand, VP of government affairs; Sean Kelly, Ontario director of patient access and health policy; and David Malian, director, stakeholder relations, for Pfizer.

Since 2001, as Canada's and the world's leading pharmaceutical company, Pfizer has been ranked the number one investor in pharmaceutical research and development nationally, and among the top 15 investors across all sectors. Last year, of Pfizer's total R&D investment in Canada, \$109 million of a total \$190 million was invested here in Ontario.

We believe that Bill 102 puts Ontario at a major crossroads. We believe the government must decide how it wishes health care decisions to be made: either as part of an integrated, broader life sciences investment and health strategy, or narrowly, within silos, driven by and focused on cost containment and cost containment only.

Our position on this bill is clear. We cannot support Bill 102 as it is currently written. We do remain very committed—and my company is very committed—to continue working with the government and others to change the bill so that it can create a vibrant life sciences sector in Ontario and result in healthier Ontarians.

Now I want to address the major specific concerns that Pfizer shares with Rx&D, the research-based industry association, on Bill 102. There are some goals—namely, building a more sustainable, integrated and transparent

health care system; improving access to medications; involving patients in decision-making; and encouraging collaboration amongst medical professionals—that are laudable and very important. Let me be clear: Pfizer is very supportive of these goals and wants to play a major role in achieving them. However, there are several provisions in Bill 102 and uncertainty surrounding many of the specifics of the reform package that we believe undermine these goals. As the bill stands today, some of our major concerns with the proposed legislation include:

- that a greater emphasis is placed on cost containment than on improved patient outcomes;

- the interchangeability amendments open the door to policies that reduce or may eliminate patient-physician choice in determining the most appropriate course of therapies for the individual needs of patients;

- competitive pricing agreements, modeled on the US Department of Veterans Affairs, could also eliminate physician and patient access and choice, a lack of choice that will impact the most vulnerable: the poor and the elderly;

- sweeping powers given to the executive officer to determine details of the new policies and to make access decisions in the “public interest” without appeal mechanism or appropriate checks and balances; and

- there has been no disclosure of the economic and health impacts of the bill.

Once enshrined in legislation, Bill 102 will have lasting negative implications for patients and investment in Ontario, along with unintended and unanticipated interpretations and consequences. That is why we believe we must very carefully examine, consider and change the bill appropriately. The government’s specific intentions on these initiatives must be made very clear. Given the magnitude and unprecedented way the bill is being rushed through for Ontarians, we believe we should take the time to get it right.

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We understand the government’s concern with rising demand for medicines and related costs to its drug budget. It should be noted, however, that over the last two years the growth of innovative medicines within the drug budget has slowed dramatically to only about 5%—5% in 2005, 8% in 2004, and 18% in 2004 for the generic industry. Investments in innovative medicines should only be a concern within the context of ensuring that the government, taxpayers and patients receive good value. That value comes from the treatment and prevention of illness—fewer and shorter hospital stays—keeping people well and productive contributing members of society.

When it is said that drug spending is too high, we need to ask some specific questions: Do we want to prevent heart attacks or treat them in emergency rooms? Do we want to help arthritis sufferers keep working and paying taxes or pay them a disability pension? Can home care be delivered without access to a range of innovative medicines?

We should not be so focused on the cost of health care only, but on the value of health. Let’s consider the cost of

disease and how to lower it by investing in health. That is done by recognizing our spending on medicines not as a cost we absolutely need to minimize, but as an investment that gives returns. Here Bill 102 falls short.

Ensuring the best use of medicines within the overall context of other health services cannot be done by any one part of the health care system in isolation. There is a better way than that outlined in Bill 102. It requires a focus on improving patient outcomes through integration, collaboration and innovation as partners. Pfizer, through its vast experience in disease management in Canada and abroad, can play and wants to play a very important role in making this happen within the context of a provincial health care system that ensures patients have access to the right medicines they need.

Pfizer has unparalleled experience in implementing major health care partnerships, and since 2001 we have sought to collaborate with the government of Ontario on a patient-centred, integrated, disease management partnership. While we have yet to gain a commitment from the government of Ontario, Pfizer has a track record of success in collaborating. For example:

- In collaboration with the state of Florida, Pfizer implemented a first-of-its-kind disease management partnership. The Healthy State program reached nearly 150,000 high-risk Medicaid patients, resulted in improved outcomes for patients, and over two short years saved the state of Florida more than \$61 million. Similar disease management programs are under way with Pfizer and governments in Italy and in the UK, with the NHS.

- In Ontario, we successfully collaborated with DaimlerChrysler, the Canadian Auto Workers and the Windsor-Essex County Health Unit on a partnership called Tune Up Your Heart. The objective of this program was to improve the heart health of employees through a worksite program consisting of education and medical interventions, including the appropriate use of medicines. There were dramatic results for the 373 employees who participated in the 12-month program. The average level of risk for a heart attack or stroke was reduced, and nearly half of the participants lost weight. To the benefit of the employer, and likely the employees, a third-party financial analysis found the program had projected discounted savings of more than \$2 million over 10 years.

Pfizer has also been very active in building Ontario’s biopharmaceutical sector. Just last month, Pfizer invited the leaders of Ontario’s biomedical community—

The Chair: Monsieur Halfon, with regret, the time has expired. On behalf of the committee, I would like to thank you for your presence, as well as your colleagues, Messrs. Lallemand, Kelly and Malian, and for your deputation as well as your written submission.

Mr. Halfon: Thank you very much.

APPLE-HILLS MEDICAL PHARMACY

The Chair: I would now invite our next presenters to come forward. This is Mr. Ben Shenouda of the Apple-Hills Medical Pharmacy group.

Mr. Shenouda, I believe you're coming from the next room, so please do so. Please be seated. Your time begins imminently. It begins now.

Mr. Ben Shenouda: Hi. My name is Ben Shenouda. I'm a pharmacist and I'm representing Apple-Hills pharmacy in Etobicoke.

I'll make it very simple. I'll take about two minutes to go through my papers here and then I will leave the rest of the 10 minutes for the committee to ask me whatever questions they see necessary.

I have here a financial statement for my pharmacy. I have three scenarios. The first is the current situation; the second one is when Bill 102 will be applied, and this is 8% on the wholesaler price to the pharmacy; and the third one is the 8% on the manufacturer price.

I'll go very briefly with the financial statement. Total pharmacy yearly sales are about \$1.2 million. The current markup is about 3.5% average. The generic rebate is about \$96,000, and this is calculated based on 40% out of 20% of the total sales. From this financial statement, the net profit after tax is \$32,000 and the return on investment is about 3% on \$1.2 million.

The situation when Bill 102 will be applied, as 8% on the wholesaler price to the pharmacy: This will give me the net profit after tax as \$11,000 and the return on investment on \$1.2 million as 1%. However, if the 8% will be applied on the manufacturer price, my pharmacy will be in the red zone and I will have to close.

I'm done with my presentation.

The Chair: Thank you, Mr. Shenouda. We will move to the government side. We have about two and a half minutes per side.

Mr. Peterson: Thank you for your presentation. Your analysis here indicates that your "average cost of tech filling Rx" is \$3. What do you mean by that?

Mr. Shenouda: This is the technical filling. This is including the depreciation of my computer, my printer, the cartridge, the label, and the vial for the prescription.

Mr. Peterson: So this includes a bundle of costs, not just a straight labour fee.

Mr. Shenouda: Yes, it is a bundle of costs. That's right.

Mr. Peterson: This is a fair amount of information to absorb quickly.

We have a question from Kathleen Wynne.

Ms. Wynne: Could I just ask a question on this? I've seen a number of pharmacies that have used this template, so I just have a question about it. When you calculate your receipts, you're just using your dispensary receipts? Is this your front store as well? What's in that first section?

Mr. Shenouda: The \$1.2 million, you mean?

Ms. Wynne: Yes.

Mr. Shenouda: This is basically the prescription.

Ms. Wynne: This is just the prescriptions.

Mr. Shenouda: Yes.

Ms. Wynne: Okay. And your expenses are everything?

Mr. Shenouda: Yes, because in my pharmacy I have a very small over-the-counter section, so—

Ms. Wynne: But those numbers aren't in here.

Mr. Shenouda: No, they are not here.

Ms. Wynne: Have you run the numbers with your total receipts?

Mr. Shenouda: Yes, we did.

Ms. Wynne: But you haven't brought that. So—

Mr. Shenouda: It wouldn't be relevant to this committee because what's happening is that the over-the-counter part of the sales is small enough that it wouldn't bring any significance to the figure.

Ms. Wynne: But then, do you discount your expenses for the over-the-counter part?

Mr. Shenouda: Yes. I did not—

Ms. Wynne: These are all your expenses, right?

Mr. Shenouda: I did not include the lady who is taking care of the over-the-counter. This is only people working for the pharmacy, for the dispensary—

Ms. Wynne: Except you've got your cashier.

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Mr. Shenouda: Yes. This is for prescription—

Ms. Wynne: You've included everybody who works for you. I guess the point I'm getting at is, I'm just not clear sometimes, when I look at these templates, exactly what expenses are included. So it would actually be helpful if you could give us, at some point, the total amount of your receipts compared with your total expenses, because you've given us your total expenses but we haven't got your total receipts.

The point here is that we are in no way interested in disadvantaging small pharmacies. That's not what this is about. We're trying to bring to the system some transparency, and we're trying to find resources to reinvest so people get the medications that they need. That's the intent of the bill. So if you could get that to us, it would be great.

The Chair: Thank you, Ms. Wynne, for your questions and comments. To the PC side. Mrs. Witmer.

Mrs. Witmer: Thank you very much. I really appreciate your coming forward. I think it's regrettable that independent pharmacists need to bring in their numbers, their financial statements, in order to demonstrate to the government that this legislation is going to put them out of business or drastically reduce their ability to provide services.

How long have you been practising as a pharmacist?

Mr. Shenouda: Seven years in Canada. In total, 23 years.

Mrs. Witmer: And have you ever experienced anything like this before?

Mr. Shenouda: No. I've practised in Europe before. I've practised in Third World countries. I've never experienced this before.

Mrs. Witmer: Well, I guess it's really quite shocking. The government didn't bother to do any consultation on the recommendations, and now we're hearing from hundreds of people like yourself who are really very concerned. You came to this country thinking that you

could have a good life for yourself and your family, and now we see this impact. What does the government have to do to amend this bill to allow you to continue to support yourself and your family?

Mr. Shenouda: Personally, I believe that the government has to check the right figures before they make any decision, because I think, from what we hear and what we talk about and what we know, as well, from all the meetings we did with our MPPs, the base of the information was not correct. So basically a decision had been taken on wrong information. That's why we see the concern about pharmacists. We see as well the contradictory effect. The intention is good, but the figures based on which the government had made a decision, are not accurate, and that's what we see as the problem.

Mrs. Witmer: So there's obviously a need for the government to take more time—not push, ram the legislation through—in order that people like yourself can continue to provide the health care services.

Mr. Shenouda: In my opinion, this is a very major change in the system, and any major change needs much more time and needs much more discussion to come up with a better system, not with another system which will show us problems in the short term or even long term and then we need to change it afterward.

Mrs. Witmer: I appreciate that. Thank you very much for coming forward today.

Ms. Martel: Thank you for being here today. Let me just look at your markup for a second and the three scenarios that you gave us. Current situation: 3.5% would bring you in about \$42,000. The next page: markup 8%, \$96,000; then, markup 2.5%. That, of course, goes back to the dilemma of, what is the markup based on?

Mr. Shenouda: Exactly.

Ms. Martel: So there's a significant difference from what you've got now. It could either go up substantially or it could go down quite dramatically, depending on what the government chooses to have the markup based on.

Mr. Shenouda: Yes. That's right.

Ms. Martel: Okay. So those figures are quite valid, because we know where the government is on that.

Now, you would know this morning that the government said there wouldn't be a \$25 cap, essentially, on very expensive drugs.

Mr. Shenouda: Yes, I'm aware of that.

Ms. Martel: Do you carry those in your pharmacy normally?

Mr. Shenouda: Not so often, although I have to bring to your attention here that that 25% cap will affect medication more than \$312.50, and this could be your Losec, if you have an ulcer, for three months' supply, having two tablets a day, or it could be your Actos if you are diabetic. It could be any of those expensive medications. So we are not here talking about HIV or MS patients. We are talking about patients with chronic disease. They can take this medication; any one of us can take it if we get any of those normal, you-see-every-day medications.

Ms. Martel: Let me ask you about your generic rebate, because you put a figure down right now as \$96,000. Can you tell the committee what you use that funding for?

Mr. Shenouda: I use this to fund my pharmacy, because there is a cost of operation. There are more than 150 medications on the list. The government pays basically zero on it. So I need to subsidize, if this is a valid point, the health care system with my generic rebate.

Ms. Martel: Do you run any heart-healthy programs? People coming into the store to get their—

Mr. Shenouda: I do what's called a medication management program. I get patients who are confused with their medication. I sit with them, I brief them about their medication, I advise them on how to use it, I check the drug interactions and all these kinds of things. I don't charge anything.

Ms. Martel: Do you have any equipment, for example, that you may have purchased for the pharmacy that allows you to do either your medication management program for patients or other things that you do for patients?

Mr. Shenouda: Other than my PC or computer, no, I don't have anything specific.

Ms. Martel: Thank you.

Mr. Shenouda: You're welcome.

The Chair: Thank you, Ms. Martel, and thank you as well, Mr. Shenouda, for your deputation on behalf of Apple-Hills Medical Pharmacy.

CANCER ADVOCACY COALITION OF CANADA

The Chair: I invite, on behalf of the committee, our next presenters: Colleen Savage, president, and Jim Gowing, chair of the board of the Cancer Advocacy Coalition of Canada. Please come forward. Your deputation time begins now.

Ms. Colleen Savage: Thank you for inviting us to come this afternoon. I'd like you to know that with me today is Dr. Kong Khoo, a medical oncologist from British Columbia, because Dr. Gowing couldn't overcome the transit system today. Dr. Khoo is vice-chair of the board. I think you have our document. I will cut through it pretty quickly because I'm pretty sure you will have some questions for us.

Cancer patients have asked us to let you know that they have less access to cancer drugs in Ontario than they would have if they lived in many other provinces, particularly British Columbia, where cancer outcomes are the best in the country. Bill 102 and its related package of policy framework and regulations will help to address that problem. We do stand by our earlier commentary, when this bill was first introduced, that we are greatly encouraged to see Health Minister Smitherman talk about improving access to important new cancer drugs and important new drugs for all diseases. We are pleased with the promises we hear. We are, of course, worried about whether those promises become reality in the way that we hear the promises.

I want to make sure that you understand, and I'm willing to spend a minute of this precious time telling you, that we have had probably the best consultation process I've ever been involved with. We have ready access to the minister, to the deputy minister, to Helen Stevenson, any time we want. They have been open, responsive and candid to our every question. The long, long list of questions, of course, means that we aren't done, but I certainly can't complain at all about the responsiveness of that team in meeting with us whenever we want to.

I'm going to cut to page 2, where we get right into the issues that are still of some concern to the Cancer Advocacy Coalition. The first is section 16, the exceptional access mechanism. We haven't got a read yet on how rigid or flexible that system is going to be, so we have some suggestions. We believe that the new process should not limit the number of drugs that are available for exceptional access. We believe that oncologists are qualified and knowledgeable about cancer drugs and can easily figure out what a patient needs because they know their patients well. Oncologists are very concerned that if untrained individuals are going to be making decisions about exceptional access, we need to know who those people are and what guidance they are following.

When all other treatments have failed, a cancer patient is in dire need of a new choice and cannot wait for an answer. Please make sure people understand that. There's no delay that's acceptable; there's no indecisiveness that's acceptable; it simply has to work. Our oncologists have suggested that the best thing for them would be an online application, a simple one-page form where they can insert the information about the patient, click and submit and get an instant answer, "Yes." That would be a nice world, right? We're not that naïve, so one of the conditions that we're happy to recommend to you and we believe oncologists would be happy to accept is that that instant answer, "Yes," be followed two months later by a requirement for the oncologist to respond to the ministry, "That treatment worked," or, "It didn't." If it did work, that's a good enough reason to continue it. If there's no evidence that it worked, that's a good enough reason to stop the exceptional access.

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One of the examples that has been brought to our attention is that when asking for a renewal of a section 8 in the past, if the treatment had worked and the patient's condition improved, then that new health status would be reason to cut off access to the drug that provided the improved health status. We've mentioned this to Helen Stevenson, and I'm sure she's going to take care of that little detail.

I need to point out to you that Ontario does not pay for many cancer drugs that are proven effective and are widely used elsewhere. Apparently, cost is the deciding factor. The only condition that should apply to the use of a cancer drug is whether it is effective.

I'll take a minute to talk about conditional listing during the review process as well, because one of the

features that has been described to us is that the ministry will enter into written agreements not only about the pricing and other details with the manufacturer, but for surveillance of treatment outcomes, because of the relatively new use of these new drugs in a real-world market. We think that's a great idea. We encourage it. We also think those same kinds of phase 4 studies could be applied to all drugs accessed through the exceptional access mechanism. That kind of information is extremely valuable to oncologists.

On therapeutic substitution, we have the minister's word that he has no intention of permitting therapeutic substitution at the pharmacy. We believe him, we trust him, he's given us his word, and we'll let the matter drop there. However, we see an unusual situation in competitive agreements that might in fact create therapeutic substitution done by the ministry. The way that would work is that the ministry contracts or tenders out an entire group of same or similar drugs and allows only one supplier. If that were to happen with cancer drugs, I can tell you that cancer patients and oncologists would be deeply upset. But I wanted Dr. Khoo to describe to you in greater detail on this particular point why it's so important.

Dr. Kong Khoo: Therapeutic substitution in cancer is not feasible. Most of the drugs we use, although they can be similar—they're analogues of each other—have differing enough effectiveness in evidence-based studies for the different applications that substituting one directly for another would not be evidence-based and not implementable.

In Alberta, they've decided for a class of cancer drugs called aromatase inhibitors to only fund one, but the evidence exists best for the other two in other situations. So I think for cancer in particular this process will not necessarily work most of the time.

Ms. Savage: Dr. Khoo has the pleasure of working in British Columbia, which has the best access to cancer drugs in the country. If you'll bear with me a minute, I want him to explain to you how that has happened there. Maybe Ontario can learn from the west coast.

Dr. Khoo: We undertook an evaluation, a survey, of what drugs are available. We took 20 of the newest drugs that represent the standards of care. They actually represented 24 individual drugs or indications. BC funded and fully paid for 21 of those 24 drugs. Other provinces funded as few as four. There's this huge discrepancy across the country. Each province has different mechanisms for vetting and evaluation. They come to different conclusions, often from the same evidence.

I think there needs to be a major change in this. Some of this will come from the Canadian strategy for cancer control. But I think some of the process exists within the jurisdictions of how drugs are vetted and evaluated.

Ms. Savage: I'll just move quickly along, because I can see everybody looking at their watches.

We anticipate three types of appeal decisions that we would draw your attention to. The first is the appeal for an exceptional access. I would remind you that a quali-

fied practitioner has to be the person who hears and reviews that kind of appeal. If any of our oncologists, for example, were to be turned down for an exceptional access cancer drug and wanted to appeal, first of all, could they; secondly, who would be the practitioner or the staffer who heard that appeal, and are they qualified to do so?

Secondly, I have to tell you that the patient advocates who have been in this building through the last several months have told me on more than a few occasions that they get no response from the ministry when they write letters of complaint. They want some reassurance of a more respectful response to their concerns. They want to know how they will know that any kind of appropriate investigation or follow-up will take place at all when they write as citizens to complain about drug decisions.

Thirdly, the matter of any rejection of the initial drug submission: We just want to see the citizens' council used in a constructive way here. It's not clear to me what the citizens' council is really supposed to do, but I would like to suggest that that's a valuable asset to add as the third element to a drug review, the first being the clinical evidence and the second being the cost-benefit analysis. That third element of social values, citizen expectations—

The Chair: Thank you, Ms. Savage and Dr. Khoo, for your deputation on behalf of the Cancer Advocacy Coalition of Canada. The committee thanks you for your presence as well as your written materials.

Mr. O'Toole: Chair, on a point of order: I just wonder if I could clarify if you're supportive of Bill 102?

The Chair: Mr. O'Toole, I believe that is not a point of order.

GLAXOSMITHKLINE

The Chair: I will now proceed to invite our next presenters: Mr. Paul Lucas, the president of Glaxo-SmithKline, and other colleagues. Gentlemen, please be seated. I invite you to begin your deputation. As you've seen the protocol, there are 10 minutes in which to make your full presentation, which begins now.

Mr. Paul Lucas: Good afternoon, Mr. Chair and members of the committee. Thank you very much for this opportunity to speak with you today. My name is Paul Lucas, president and CEO of GlaxoSmithKline.

As one of Ontario's leading health care companies, GSK plays a vital role beyond the sale of innovative medicines. We are committed to investment in R&D, innovation and the economy. One of our three manufacturing facilities located in Mississauga produces and ships \$2 billion of product, which represents almost 25% of total Canadian pharmaceutical shipments. This facility produces over 75 different products that are exported to over 70 countries worldwide. These product mandates sustain, and have recently added, many high-value manufacturing jobs in Ontario.

Last year, GSK invested almost \$140 million in research and development in Canada. More than half of

this was invested in Ontario, including \$21 million in direct payments to Ontario universities and hospitals. We are among the top 15 contributors to R&D in Canada, across all sectors.

With limited resources in the public sector, GSK has maintained a commitment to investing directly in Canadian research talent. As a partner in R&D, we enable scientists and physicians to conduct their important discovery and development work here in Ontario. This is costly work, but it pays off when Ontario patients benefit from new treatments and cures. I cannot imagine where we would be today without 3TC, co-developed by GSK and Shire BioChem here in Canada. This medicine is now the cornerstone of HIV/AIDS treatment, and is considered by many to be the most important discovery in Canada since insulin.

We continue our search for the cures of tomorrow. GSK invested \$3.75 million in the Structural Genomics Consortium at the University of Toronto. This basic research initiative will provide important structural information for over 350 proteins that will be made available to scientists worldwide. It is just one of a number of investments in Ontario—one that this province also supports—that we believe will contribute to the discovery of new products for unmet medical needs.

Our investments serve as a catalyst for other investments, many of which are matched by federal and provincial governments. So we are not simply a supplier of a commodity; we are a partner in providing health care solutions that will benefit patients and Ontario's thriving knowledge-based economy. In short, we are investing in Ontario's future.

Investment in research and development results in earlier patient access to new medicines through clinical trials. Canada—and Ontario in particular—is among the top three trial sites for GSK globally. There are more than 150 clinical trials running in this country, involving 23,000 patients in over 1,400 centres, including GSK trials for exciting new products Tykerb and Cervarix, just two examples of major innovations in the area of breast and cervical cancer that are accessible to Ontarians. We have only been successful securing these trials within our global company because we've been able to demonstrate, until now, that this is a jurisdiction that supports research and innovation.

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Despite the years of work to create a vibrant biopharmaceutical presence in Ontario, Bill 102's sole focus on cost containment undermines this effort. This legislation wrongly targets the innovative industry through cost control measures and transfers much of the savings to an unregulated sector, where generic prices are some of the very highest in the developed world. How will this strategy find new cures, provide access to breakthrough medications, improve the health of patients in Ontario and benefit our economy? When patient outcomes are compromised, how does this cut costs in the long term?

We have a few specific requests to the government for amendments which could greatly improve the legislation.

(1) **Therapeutic substitution:** While the government statements say therapeutic substitution is not the intention of the changes, the wording of the legislation is otherwise, requiring pharmacists to substitute “same” for “similar” medicines from what is prescribed. The bill does not take into account the value of incremental improvements in medicines for individual patients based on their unique needs, and reduces access to innovative treatments based on cost alone. We need to ensure that Bill 102 values the innovative industry and protects the integrity of the patient-physician relationship, rather than allowing the government to alter the prescribing decision based solely on cost.

(2) **Price freeze:** Bill 102 proposes a continuation of the price freeze on the provincial formulary which has been in place since 1994, and a rollback of any price increases taken in the private market. No one likes to see price increases, but inflation has increased by at least 25% over that period of time and Canadian prices are already 9% below the international median for innovative pharmaceuticals. Many people are not aware that GSK and the innovative industry prices are regulated by a federal agency, the PMPRB. So we are not asking for any special dispensation, but only to have fair compensation for our products that is in line with the annual increase in CPI. This would put our industry on par with other government programs that allow for annual increases, such as tuition, rent and other areas of health care.

(3) **Off-formulary interchangeability:** We are asking for off-formulary interchangeability to be delayed until the actual benefits and impacts are evaluated. While we would welcome reforms resulting in employer cost savings, there is currently no evidence indicating that OFI, as outlined in Bill 102, will achieve those savings. In fact, since the prices of generic drugs outside the provincial formulary are not regulated, there is no guarantee that patients or payers will receive lower prices through off-formulary interchangeability.

Most people would agree that medicines and vaccines have transformed health care, reducing death and disability across most diseases. Those innovations have occurred through incremental steps, not major leaps. Bill 102 does not recognize the value of incremental innovation in medicines, even though this is the method of progress of all technologies.

Like you, we want Bill 102 to work for the benefit of patients and to preserve the great progress we have made in developing Ontario as a centre of excellence in research and development. Clearly, this proposed legislation is not aligned with Ontario's innovation agenda and will have the opposite effect by restricting patient access to the medicines they need, eroding biopharmaceutical innovation, and putting future research and development at risk.

Our treatments save lives and ultimately save the government money, so long as the drug budget is not reviewed in isolation. Innovative medicines are both effective and cost-effective. In a province that claims to embrace innovation, cost containment instruments must

be replaced with innovative approaches to pharmaceutical care that look at spending on medicines not as a problem but as an opportunity: an opportunity to leverage the spending on pharmaceuticals to drive economic growth and improve access to the treatments that patients in Ontario need.

We have been partners in the past and we continue to be partners today. A recent example of GSK's partnership with hospitals, community physicians and allied health professionals is our chronic disease management initiative called PRIISME. Through this program, we are seeking ways to collectively improve the management of chronic diseases in asthma, COPD and diabetes. The results of this initiative have demonstrated a reduction in ER visits, hospitalizations and unscheduled doctor visits. That's good for patients and it's good for the government's bottom line.

I would ask you to seriously consider the amendments I've outlined to Bill 102 so that we can continue to be partners in the future. Thank you.

The Chair: Thank you, Mr. Lucas. We have 20 seconds per side. Ms. Witmer.

Mrs. Witmer: Thank you very much, Mr. Lucas, for an excellent presentation. Are you going to leave a copy of those amendments with us?

Mr. Lucas: I can, yes.

Mrs. Witmer: We'd really appreciate that. I guess, basically, you're telling us that this bill is going to have a huge impact on innovation in this province and also make it harder to attract investment.

Mr. Lucas: Absolutely.

The Chair: Thank you, Ms. Witmer. Ms. Martel.

Ms. Martel: Thank you for being here. One of the new powers of the executive officer is to negotiate agreements with manufacturers of drug products. Has the government given you any idea of what that process is going to look like?

Mr. Lucas: No, not really.

Ms. Martel: What have they told you in this regard?

Mr. Lucas: They've told us that it really is along the lines of the Veterans Affairs model in the United States, which is basically a program of therapeutic elimination and restriction of access—

The Chair: Thank you, Ms. Martel. We'll move to the government side. Mr. Peterson.

Mr. Peterson: You had an innovative product for treating diabetes, I believe, called Avandia, which we were not able to purchase from you or work on an educational program with you under the old legislation. This new legislation contemplates that. Is it a good idea for us to include that in this new legislation?

Mr. Lucas: We believe that it's a great idea to negotiate agreements that are going to benefit patients and patient outcomes, but not to base that negotiation on price alone.

The Chair: Thank you, Mr. Peterson. Thank you to you, as well, Mr. Lucas, and to your colleagues from GSK for coming forward. Please feel free to leave the written submission.

COALITION OF ONTARIO PHARMACY

The Chair: I would now invite our next presenters: Mr. Rajesky, of the Coalition of Ontario Pharmacy. Mr. Rajesky, you've seen the protocol: 10 minutes in which to make your full deputation, and any colleagues you may have with you, please have them identify themselves for the purpose of Hansard recording. Your time begins now.

Mr. Allan Rajesky: Thank you very much. My name is Allan Rajesky. I'm director of pharmacy innovation for Pharmasave National. To my immediate right is Gersh Sone, who is the CEO of the Canadian Association of Chain Drug Stores, and on the end is Art Ito, who is the director of pharmacy services for The Bay/Zellers Pharmacy.

As I said, I'm Allan Rajesky and I represent the Coalition of Ontario Pharmacy. We are a non-partisan group of pharmacies, pharmacists, patient advocates and health care groups. Our members include all sizes and types of pharmacies—small, medium and large pharmacies, independent drugstores and chain drugstores, owner-operated pharmacies, franchise pharmacies, company-owned pharmacies, pharmacies in grocery stores, pharmacies in department stores and stand-alone drugstores. We represent more than 80% of the drugstores in Ontario.

Our members include, at one end of the scale, the Independent Pharmacists Group and the Independent Pharmacists of Ontario, and, at the other end of the scale, the Canadian Association of Chain Drug Stores and the Ontario Chain Drug Association. Most of us are members of the Ontario Pharmacists' Association. The OPA and our coalition play different but complementary roles. The OPA represents about 60% of pharmacists and is the voice of the profession. Our coalition is focused on the operational side, not the professional side—that is, the business side of pharmacy. We represent more than 80% of them. In fact, that is how the coalition came into existence. The announcements of April 13 showed a lack of understanding of the business side of pharmacy, a lack of appreciation for what it takes to keep community pharmacies sustainable.

We are a health care profession, a healing profession, but we can't heal if we're not in business. Patient care will suffer if pharmacies close. Patient care will suffer if pharmacies reduce their hours or lay off employees. Patient care will suffer if pharmacies cannot afford to provide special services like delivery, tablet splitting, health days—the ones most of us offer as part of our current offerings to the community. Patient care will suffer if pharmacies, especially pharmacies in rural and northern Ontario, can no longer afford to stock high-cost drugs like those used to treat cancer, MS or HIV, although it sounds like this may have been resolved today with the elimination of the markup cap.

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All in all, patient care will be cut if the government cuts community pharmacy, and that is what this legislation is doing: It cuts community pharmacy. The package of reforms announced on April 13 will take about

\$500 million out of community pharmacy, and that's a conservative estimate. It's also a net figure; that is, it takes into account the new investments that were announced as well.

The largest impact—not the only, but by far the largest impact—is the elimination of manufacturers' promotional allowances. This is what the ministry is terming "rebates." Some of you may be thinking that \$500 million is an unreasonable figure. Some of you may have been told that our figure is wrong, but the people who say that are not in the business of pharmacy. We know our business and we know our stores. All the members of our coalition have looked at these changes. We know our costs; we know our revenues; we know how much we receive in promotional allowances. So every member of the coalition knows very definitely what impact these changes will have.

Five hundred million dollars is a very conservative estimate, but don't just take our word for it. I invite you to consider what the minister and the OPA have said about the impacts, particularly the manufacturers' allowances.

Before I mention the numbers, I will point out that the pharmacy market is larger than the prescriptions paid for by the Ontario drug benefit, or ODB. ODB accounts for about 40% of pharmacy sales. The minister looks at ODB sales because that's all the government pays for, and says that eliminating promotional allowances will save \$210 million—\$210 million, only looking at 40% of our business. The OPA looked at only ODB sales and said that eliminating promotional allowances will save \$253 million—\$253 million, again only looking at 40% of our business. Even using these numbers, when you extend them to 100% of the pharmacy business, you can see that our conservative estimate of \$500 million is pretty close to the mark.

I've heard some MPPs talk about whether promotional allowances are a good or bad source of revenue. In our view, that misses the point. The point is, you can't remove one of our major sources of revenues and not replace it. Otherwise, patient care will suffer. You can't take half a billion dollars out of community pharmacy and not replace it. That means taking an average of \$150,000 out of each store. The biggest impact will be on the 750 independent pharmacies. The biggest impact will be on stores in northern and rural Ontario. As many as 300 pharmacies will close. The government knows this.

On May 5 the director of the ministry's Drug System Secretariat admitted that drugstores will close. I was there. He told me. Last Friday, a Liberal MPP admitted that drugstores will close, once again. There will be other impacts on patients—too many to list—from longer wait times to no service on evenings or weekends to lack of access to certain drugs or services. Patient care will suffer. Communities will suffer.

Our message is simple: A cut to community pharmacy means a cut to patient care. The government cannot cut our funding without replacing it. However, none of the new funding is included in the bill. On the other hand, the major cut to our funding is in the bill. Moreover, the new

funding is not sufficient to offset the cuts. The net effect will be a cut of some \$500 million. You will hear later from the Canadian Association of Chain Drug Stores, the Ontario Chain Drug Association and the Ontario Pharmacists' Association. We support all of their proposed amendments.

We specifically urge you to amend the bill to allow for the continued investment of manufacturers in pharmacy, using promotional allowances while making it more transparent. We also urge you to include the composition and duties of the pharmacy council and the citizens' council in the legislation, giving these councils the ability to negotiate; draft language has been circulated. We urge all MPPs to defend community pharmacy. Thank you.

The Chair: Thank you, Mr. Rajesky. We'll have about a minute or so per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you for being here. I want to see if you can clarify something for us. Mr. Shenouda—I think you were here for his presentation—used this, and now there are questions being raised about why total receipts and total costs are not included, so it might make these figures illegitimate, is the nice way to describe it. Do you want to comment on the use of these spreadsheets, because I know the coalition has been using them, and the figures that appear? I know they're going to be different from one pharmacy to another, but how they appear and why they're relevant.

Mr. Rajesky: I don't have all those numbers right in front of me. What I can say is that when we're looking at the numbers, we're looking at just the impact on pharmacies. So what are the pharmacy revenues; what are the pharmacy costs? The front store, other things don't necessarily come into play with this because you still have to fill your prescriptions no matter what you're selling in the rest of your store. So when we're looking at costs, when we're looking at revenues, we're looking at the pharmacy side specifically.

Ms. Martel: Are you concerned that, even with the other part of the business—because you're talking about small stores, so we're not talking about Shoppers selling everything under the sun; my community pharmacy is mostly selling medication, not a whole bunch of other things—that even with the sales from the other part of the business, that there could be a significant impact on—

The Chair: I'll have to intervene there, Ms. Martel, and give it to the government side.

Mr. Peterson: Thank you for coming and thanks for making this presentation. Do your numbers include all of the private plans and the OTC—over-the-counter—sales and costs?

Mr. Rajesky: We're not talking about over-the-counter when we're talking about the impact of the costs and revenues. We are including impacts that will have waterfall effects to private payers as well.

Mr. Peterson: Your organization—we're kind of confused in the government because we have the OPA and then we have yourselves. What is the difference in your representation of pharmacies?

Mr. Rajesky: You'll probably find that the amendments that we are requesting are the same with both groups. The OPA has been directly with the government. We've been working on the public relations and with the government as well. We're working with the pharmacy and the operational side of the business in mind, and OPA is working primarily on the pharmacist/professional side as well.

Mr. Peterson: We're—

The Chair: Thank you, Mr. Peterson. I'll offer it now to the PC side.

Mrs. Witmer: Have you had an opportunity to have a meeting with the minister or Mrs. Stevenson? We've heard how very much available they are. I just wondered: Have you made a request and have you had a meeting?

Mr. Rajesky: We've made a couple of requests. Our original one was denied. We hear there may be an opportunity to meet on Friday. There are certain restrictions on that meeting, so we need to review those and see if we're able to meet those requirements. But we may have a meeting coming up. As of yet, we have not been granted a meeting.

Mrs. Witmer: I guess if I take a look, OPA represents pharmacists, and about two thirds of the pharmacists belong to OPA?

Mr. Rajesky: About 60% of all pharmacists, which include industry pharmacists, hospital pharmacists, yes.

Mrs. Witmer: Okay. If take a look at this coalition, how many of the pharmacies/pharmacists do you represent?

Mr. Rajesky: Fairly close to 2,500 of the 3,000 pharmacies, or close to 85%.

Mrs. Witmer: So this is a substantial group, and as of yet you've not had a meeting with the Ministry of Health or a representative.

Mr. Rajesky: No. It has become a substantial group because everyone has the same concerns, analyzed their businesses and realized that this bill is not sustainable for our companies or for the continuation of patient care and the way we provide today.

The Chair: Thank you, Ms. Witmer. Thank you to you as well, Mr. Rajesky, and to your colleagues on behalf of the Coalition of Ontario Pharmacy.

GREEN SHIELD CANADA

The Chair: I invite now our next presenters, Messieurs Garner, Chiles and Clitherow of Green Shield Canada. Gentlemen, you've seen the protocol for 10 minutes, the time for which begins now.

Mr. David Garner: Good afternoon and thank you. My name is David Garner. I'd like to introduce Vernon Chiles, to my left, a pharmacist and vice-chair of the board for Green Shield Canada, and to my right, Richard Clitherow, Green Shield's vice-president of the Health Solutions Group, which has primary responsibility for government-oriented initiatives.

I'm going to start my submission to the committee with an introduction of Green Shield for some back-

ground. Following this, I'll outline our involvement with the Drug System Secretariat and their research. I'll then finish with Green Shield's position with respect to certain aspects of the proposed Bill 102 and regulatory changes.

Green Shield was formed nearly 50 years ago by pharmacists as a not-for-profit corporation and pioneered the pay-direct drug plan in Canada. To this day, 50% of our board is comprised of representatives from the pharmacy community and more than 50% of our claims are processed for the purchase of drugs.

We operate coast to coast to coast in Canada, although the majority of our business is here in Ontario, where we are headquartered.

Our customers represent a diverse group of employers and associations ranging from large industries such as General Motors of Canada, DaimlerChrysler Canada and the Ford Motor Company of Canada to many other corporations and small businesses across the country.

In addition, we provide services to the Canadian Automobile Workers, the University of Toronto and other learning centres and public organizations, such as the cities of Windsor and Sault Ste. Marie.

We also provide outsourcing service to other similar organizations in our business such as The Co-operators, and of course we have a contract with the Ontario Ministry of Health and Long-Term Care for the Health Network System, supporting the Ontario drug benefit and Trillium programs.

Our mission statement commits us to enhancing the common good in the administration of health and social service benefit plans with quality, efficiency and with service excellence. It also commits us to seek out innovative ways to broaden the availability of these services and to continuous improvement.

Examples of this would include our advocacy activities and most recently the introduction of health benefit programs specifically targeted to individuals who are unable to obtain these benefits elsewhere.

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We do consider ourselves as the specialists in the field of health-care benefit administration.

I'd like to talk a little bit about the drug system in Ontario and the input that Green Shield Canada was able to provide to the Drug System Secretariat. Drug benefit plans sponsored by employers, associations and others provide a level of coverage for prescription drugs and requisite products to approximately 45% of Ontario residents. These plans include both active and retired workers.

There are a number of different plan designs, and these are funded in a number of different ways. However, there is a common challenge that exists with all of them, and that is that costs are becoming too onerous. Our customer costs have been rising at nearly four times the rate of inflation, and it is becoming increasingly difficult for plan sponsors to sustain the level of benefits and in fact to sustain the plans themselves. This obviously could have a direct and negative impact on both access and quality of care. I'd like to add that this pressure and

challenge is not unique to us; it prevails in all industry sectors and has a significance not only to the sustainability of the health care plans but in some cases to business survival.

It's our belief that the solution may only be found in a revamped drug system for Ontario, built upon collaboration between public and private sectors to harmonize the approaches to access, affordability and quality of care for all the residents of Ontario.

Over the summer and the fall of 2005, we had an opportunity to meet with Helen Stevenson and members of her team from the Drug System Secretariat to provide our input into what we believe could bring about a process to meet the objectives I mentioned a moment ago, those being access, affordability and quality of care. We were also able to bring representation from our largest customer contingent, the auto industry: General Motors, DaimlerChrysler, Ford and the Canadian Auto Workers.

I'm pleased to confirm to the committee that a constructive, open and frank dialogue ensued, where all parties were able to freely discuss not only the challenges and problems that exist in each constituency today, but also suggest alternatives to improve the current situation, with examples of ways in which both the public and private systems could interplay for the common good.

I will now summarize for you the areas that we identified as being priorities to achieve these goals.

There is a need to harmonize the public and private drug plans to accomplish five desirable outcomes:

- firstly, the optimization of health outcomes;
- secondly, the effective management of costs and the prevention of waste;
- thirdly, to provide access to drugs for the more than 10% of Ontario residents who lack a plan;
- fourthly, to provide access to citizens with high total drug costs, such as catastrophic coverage; and
- fifthly, to provide equitable and compassionate access to expensive drugs for rare diseases or other high-cost drugs relative to the ability to pay.

All of this should be accomplished through a combined public and private financial model that will achieve coordinated and stable funding.

Continuing with our list of priorities, we feel we should strive for a unified public and private medication management strategy toward patient care, cost efficiency and safety. In other words, the right therapy provided to the patients for the right condition, in the right quantity, for the right period of time.

We should review drug costs and purchasing policies to ensure that they would benefit public and private sectors equally. This would include a broader selection of interchangeability products than that which currently exists in Ontario.

We should conduct an in-depth review of the role of the pharmacist in the compensation model to protect and enhance the services available from the health care team's most accessible member. There are no wait-time issues at the pharmacy, but are we using this under-utilized resource appropriately? Should we considering a

suite of services with appropriate compensation aimed at enhancing medication management?

Lastly, we need to ask ourselves: Are we optimizing information technology to its fullest to achieve efficiencies? In our business at Green Shield Canada, we have been able to use technology to greatly facilitate assessment and approval, exception processing and the monitoring of patient treatment regimes. We need to coordinate public and private service delivery to achieve optimal health outcomes, pricing and reimbursement alternatives.

Moreover, Green Shield Canada is a strong advocate for speedy implementation of electronic health record strategies, such as the Emergency Department Access to Drug History viewer, implemented in 2005 with the assistance of Green Shield; as well, the All Drugs All People repository, referred to as a drug information system; and electronic prescribing.

By now, I'm sure you're able to see how some of our objectives are aligned to the proposed Bill 102 and other changes. Nonetheless, I will now speak to those aspects of the bill affecting Green Shield Canada and its customers which we feel competent to address.

Let me start with the role of the pharmacist, a member of the health care team who is underutilized and often unappreciated and has a somewhat unusual compensation arrangement that does not cover all of the professional services rendered by the pharmacist.

It is time to make a change, and Green Shield Canada is supportive of the initiatives included in Bill 102, provided:

- that the pharmacists' role is enhanced and the sustainability of their service is not affected during the transition or thereafter;

- that compensation be harmonized between public and private sectors, removing the necessity to charge more in one sector and to make up for it in the other; and

- that both public and private sectors are engaged with the profession of pharmacy to support medication management services that will bring about improved patient outcomes and safety, while being identifiable and measurable such that they are saleable in the private sector.

Next, I would like to indicate our support for the proposal to create channels for improved transparency and decision-making and for greater and more diverse participation, dialogue and consultation with Ontario residents and patients, and hope that this will also extend to private plan sponsors. This is long overdue and will go a long way to seeking solutions to the problems at hand and in the future.

However, I would be remiss if I did not mention a note of concern with respect to the very broad terms of reference that are proposed for the executive officer. One of the reasons that this reform will be successful will be improved transparency, which has to include an ongoing partnership and dialogue with, amongst others, private sector health care providers and sponsors. We encourage the establishment of this function in such a way as to

ensure that the necessary degree of collaboration is maintained between the public and the private sectors.

The subject of off-formulary interchangeability, or OFI as it has often been referred to, is an important measure as well. Most provinces already have broad interchangeability. Having said this, Green Shield implemented enhanced generic substitution, similar to OFI, at the request of the automakers in January. I'm happy to report to the committee that after overcoming some expected challenges, the change has been accepted by the physicians, pharmacists and patients, and has provided considerable savings without compromising patient safety or efficacy.

Another aspect of the bill which we support and are encouraged by is the process to facilitate faster access to new medications. While not dealt with as yet, we are also a strong advocate of comprehensive catastrophic coverage. The approval process for new medications and catastrophic coverage will also be closely coupled; so too will be the necessity for the public and private sectors to work closely together to make sure this is a success for all stakeholders.

Lastly, since all of our customers have expressed difficulty with sustaining their health plans due to escalating costs from increased utilization and high drug costs, we will advocate on their behalf for any measure that deals with policies to control costs, provided that the quality of patient care and service is not compromised.

It's worthy to note that many plan sponsors of private plans are becoming increasingly frustrated, and it is not out of the realm of possibility that you could see health plans significantly scaled back or even abandoned. You can imagine the kind of dilemma that would produce. It is better, we believe, that we come together now to preserve what we so richly cherish.

On behalf of my colleagues joining me here today and the entire Green Shield organization, I'd like to thank this committee for giving us the opportunity to share our views.

The Chair: Thank you, Mr. Garner. On behalf of my colleagues, I would like to thank you for your deputation on behalf of Green Shield Canada.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

The Chair: I now invite our next presenters: from the Canadian Mental Health Association, Ontario division: Michelle Gold, senior director of policy and programs, and colleagues. Ms. Gold, your 10 minutes begin now.

Ms. Michelle Gold: Hello. My name is Michelle Gold. I'm senior director, policy and programs, with the Canadian Mental Health Association, Ontario division. With me is Heather McKee, community mental health analyst. The Canadian Mental Health Association is a provincial organization committed to improving services and support for individuals with mental illness and their families and promoting mental health for all of Ontario.

We have 33 branches providing community mental health services throughout Ontario.

We're pleased to see that the government's proposed reform of the provincial drug system incorporates a number of the elements that we addressed in our submission last fall to the Ontario drug benefit review. Our submission was based on input we received from CMHA branches, from people who are on the front line providing community mental health services to people with serious mental illness.

Access to psychiatric medications is a key part of recovery from mental illness for many people. One important lesson from the research is that with psychiatric medications, one size does not fit all. A reformed drug system must ensure access to a variety of psychiatric medications, even for those of limited means. It's a fact that people are hospitalized because they discontinue necessary medications they cannot afford.

People with serious mental illness also have high rates of physical illness, such as diabetes and heart disease. They require access to a range of drugs for these and other physical conditions.

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CMHA Ontario supports much of the government's plan to reform to the drug system. However, we are proposing several amendments to existing sections of the bill, as well as recommending expanding certain sections to deal with several omissions.

Bill 102 introduces the position of the executive officer of the Ontario public drug programs. The considerable authority of the executive officer includes the power to designate products as interchangeable and to list and delist products from the formulary. The role is extensive, yet many of the details are not spelled out in the legislation, such as what constitutes credible information for decision-making. Also, the justification for formulary decisions in a publicly funded system must be evident and transparent.

We are recommending that paragraph 3 of section 6.01 regarding the principles be amended to say, "The public drug system will operate transparently for all persons with an interest in the system...."

CMHA branches tell us that their clients are currently forced into using older medications because newer, more effective drugs are not yet covered by the formulary. We caution that any initiatives that restrict access to newer-generation medications ultimately end up costing the health system more. The proposed act currently states that the executive officer may list a drug product in the formulary when they consider it to be in the public interest, but there is no definition provided as to the criteria for "public interest." This has the potential to create undue hardship.

We recommend that the section be expanded to include a definition of what constitutes "public interest."

Regarding interchangeability, CMHA Ontario supports legislation that ensures that decisions about specific medications are made by health care providers in consultation with patients. "One size does not fit all" is particularly true for psychiatric medications. People with

mental illness need to have access to appropriate medication. They respond differently to different medication, even within the same class of drug. For example, a person with schizophrenia may exhibit significant side effects with one type of atypical antipsychotic but benefit from a different one.

As currently written, the act allows for therapeutic substitution, wherein drugs with similar ingredients are interchangeable. However, there must be some allowance for physicians indicating "no substitution," based on the clinical response of the patient. There are differences amongst individuals in their physiological makeup. For example, research is finding differences in the response to medication between men and women, and often we see clinical trials being repeated to adjust for gender differences.

We recommend that clause 1.1(3)(a) be amended to allow for "no substitutions" on the advice of a prescribing physician.

One of the key issues that CMHA branches identified with the current drug system is the difficulty for people with mental illness accessing medications through the limited-use and section 8 individual clinical review process. People with mental illness find the process to be difficult, time-consuming and bureaucratic. While they wait for approval, people are forced to pay out of pocket, often at the expense of cutting back on food. Others go without necessary medication entirely, with the inevitable impact on their mental health.

Timely access to medication is absolutely essential. For example, for a person with psychosis, delays in medication treatment are associated with poorer outcomes.

We recommend that section 25 be expanded to provide that the executive officer consult with physicians in determining an appropriate time frame for deciding on special cases, and that the requirement of timeliness be added to the legislation.

Lastly, we do support the involvement of consumer and patient representatives in drug funding decisions. In separate documentation, the Ministry of Health and Long-Term Care has referred to the creation of a citizens' council. We stress the importance of having people with mental illness be considered for positions as consumer representatives. Medication is a very common treatment for people with psychiatric disorders, but as a result of stigma and discrimination, people with mental illness are often excluded from decision-making processes and they're not allowed to speak for themselves. It's essential that their voices and their issues be heard equally in any process of consumer representation and public involvement.

We recommend that paragraph 2 of section 6.01 be amended to say, "The public drug system will involve consumers and patients in a meaningful way."

I'd like to thank you for the opportunity to speak to you today on behalf of the Canadian Mental Health Association, Ontario division.

The Chair: Thank you, Ms. Gold, and to your colleague. We have about a minute or so left per side. Mr. Peterson.

Mr. Peterson: Thank you very much for the great job your organization is doing in getting rid of the stigma and negative impact of mental health issues. I have worked very closely with Sandra Milakovic in Peel. She's just a wonderful representative for you. I enjoyed giving out hugs with her at the subway station.

I can assure you that when a doctor now puts "no substitution" on a prescription, there will be no substitution, and that "similar" and "same" still do not allow for chemical changeability. It will have to be exactly the same; it will just be the form. But due to the psychological nature of some of the people you're dealing with, it's very important that that be clearly understood in part of our legislation. We are also trying to take the decision-making for breakthrough drugs out of cabinet to make it faster.

Do breakthrough drugs affect people with mental health issues, and is there a faster way we could work with you to help people in those categories?

Ms. Heather McKee: Yes. Certainly that is important. I think there are a number of medications, for example, that are now available in the United States but haven't—

The Chair: I'll have to intervene there. Thank you, Mr. Peterson. We'll go to the PC side. Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation on behalf of the vulnerable client group you represent; I think you make the case very well. We heard earlier this afternoon from the Medical Reform Group, Dr. Joel Lexchin and Dr. Norman Kalant, both of whom said that substitutions don't constitute a significant problem. We did hear again this morning from the mood disorders group, as well as another group—I think it was the MS group—who were very concerned about this substitution issue. So I commend you for bringing that up. I think it's very important as you've described it here and as it was described.

Even though that one group, as doctors, is saying there isn't really a problem, do you consider this to be pretty serious? I've heard it from others. What would you like to see put in here? You've got an amendment to section—it was 6.3, right?

The Chair: I'll have to intervene there, Mr. O'Toole, with respect. Ms. Martel.

Ms. Martel: Thank you for your presentation. I'll probably make more comments than ask a question. It would be great if there was a process for breakthrough drugs. Breakthrough drugs aren't even defined in the legislation. That's the first problem. The second problem is that the new section 8 process, whatever it is, is also not outlined in the legislation, so we don't know if it's going to be better or worse than the current section 8 process. Thirdly, there is no provision in the legislation either to establish the citizens' council or the committee to evaluate drugs or the pharmacy council. So while these are all good ideas, not one of those provisions actually appears in the bill. Of course, as you pointed out, there's no definition of "public interest" in the bill even though, in at least four different sections of the bill, the executive

officer can make significant decisions—delisting, listing, interchangeability.

I appreciate your amendments; I think those will be very important to us. But there's so much that's not in the bill that the government has promised, and it makes me wonder why some of these things, which are very easy, don't even make their way into the legislation if the government is intent on actually implementing them. Thank you for your presentation today.

The Chair: Thank you, Ms. Martel, and thank you to you as well, Ms. Gold and Ms. McKee, for your presentation from the Canadian Mental Health Association, Ontario division.

ROBERTS RESEARCH INSTITUTE

The Chair: I would now invite our next presenter, Mark Poznansky, president and scientific director of Roberts Research Institute.

Mr. Poznansky, as I'm sure you've seen the protocol, your 10 minutes begin now.

Dr. Mark Poznansky: First of all, thank you for giving me the opportunity to present this afternoon. I believe the deliberations you are undertaking and the decisions that will subsequently be made may have profound implications for the future health and wealth of this great province—perhaps more than most can predict.

Let me start by saying that I understand many, if not all, of the issues surrounding Bill 102. I don't want to respond on behalf of the pharmaceutical industry or, in fact, any other industry; they're more than capable of speaking for themselves. I'm also quite sure that patients' interests are clear. They simply want access to the best medicine and at the most affordable price, and certainly the ministry is acutely aware of the cost issues and the incredible pressure their budgets are under. My issue is quite different.

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I want to talk about our children and our children's children and the lives they will lead, their standard of living, which also translates into the quality of health care they will be able to afford. Many of the most advanced western countries have embraced the innovation agenda and made major headway in converting their economies from those that are based primarily on resources and manufacturing to industries that are part of the knowledge-based sector. It is discouraging, but not surprising, to realize that a number of countries have now surpassed Canada in that respect; I refer to Ireland, Sweden, Finland and even tiny countries like Israel and Singapore. The United States and most parts of western Europe also seized these opportunities some time ago.

Globalization is not so much a threat as a fact of life, and there are not many who believe that Canada's extensive automobile industry will survive globalization and the movement of those jobs to lower-cost centres such as Mexico, India and China over the course of the next decade. We live today with huge surpluses as a result of the current price of oil, but how long will that

last as we've seen the commodity price index slowly erode over the past decades? Surely it is our responsibility to plan for the time when we are making fewer cars in Ontario and the price of oil has stabilized or decreased. So it seems clear that if Canada, and specifically Ontario, is to prosper, we must succeed in the innovation game; that is, the knowledge-based industries.

Outside of the IT centres in Ottawa and Kitchener-Waterloo, it is safe to say that we are doing poorly. My expertise is in the area of the life sciences, medical devices, biotechnology and pharmaceuticals. In order to produce a significant impact in these areas, we need huge investments, not in the tens of millions of dollars but in the hundreds of millions. This will likely require dollars flowing from major corporations and major investment houses. While there are some in Canada and Europe, and even some in Asia, it is safe to say that the vast majority of any such investment will have to come from south of the border. In order for those funds to flow, those investors will have to have confidence in our technology, in our management and in our public policy. They will have to have a strong perception that their investments are solid.

Make no mistake about it: Bill 102 is not seen to be friendly to those who might seek to invest in Ontario in the area of innovation in the life sciences, and here we speak about the biotechnology industry and the pharmaceutical industries, which now are more and more very much the same.

Returning to the issue of perception, I'd like to recount a very telling story of an event I recently experienced. I was down in Boston, seeking an investment from a major biotechnology company seeking to do a deal with a small Ontario firm. They loved the technology but in the end passed on the investment, citing concerns over the issue of patent protection. They did not have confidence in Canada's patent policy and in fact questioned whether Canada had any patent policy at all.

Now, we might laugh at their mistake. We might even say, "Typical American ignorance about Canada." The fact of the matter is, we have pretty good patent protection. But perception is often reality, and if we allow the Americans to have that perception in this case, then the laugh is on us, because at the end of the day we are the ones who walk away from the table without the investment.

Bill 102 is about price and accessibility of drugs for the people of Ontario, but it is also about perception, and in the long term it might be that the cost of that perception may far outweigh any cost savings. There is a very strong perception out there—and this goes beyond the walls of the pharmaceutical industry—that Ontario is not a friendly environment for the patented medicine drug companies. Traditionally, it has been very difficult to get new patented medicine onto the Ontario formulary. There have been drugs discovered and developed in Canada that did not gain access to the Ontario formulary until they had long since entered common use across the United States and many Canadian provinces. Bill 102 only strengthens that negative perception.

So those of you who are in support of Bill 102, please understand the downside. Please understand the potential ramifications. You may save dollars—you may save hundreds of millions of dollars—but at what cost, especially at what cost to the future and especially to our children's and their children's future?

This bill will make the establishment of a strong, innovative life sciences industry in Canada even more difficult. Major corporations in the life sciences will shy away from making any major investments in Ontario, and raising significant capital from major investment houses will be similarly difficult. Its passing, especially in its current form, will only add to the perception that at least in this sector, Ontario is not a good place to invest. So please examine the bill carefully, not just from the point of view of current drug prices but from the point of view of the future and the future of life sciences investments in Ontario.

Just to show you the growth of this industry, I show you a graph of the growth of the biotechnology industry in revenues in the United States. These are revenues that are not accruing to Canadian companies. Thank you.

The Chair: Thank you, Dr. Poznansky. We'll move to the PC side. Ms. Witmer.

Mrs. Witmer: Thank you very much, Mark, for coming today. I really appreciate your presentation. This is a little different than what we've been hearing, but I think it's absolutely necessary that this be very seriously considered by the government. You referred to my community, Kitchener-Waterloo, where we have been successful and people have been able to take risks, but certainly I think the facts illustrate that if the government moves ahead with Bill 102, as it currently intends to, we are going to lose out on any future investment in this province. Is there anything within the bill that could be changed that would change the investment and innovation climate?

Dr. Poznansky: I've gone through the bill and I recognize the issues of cost containment; I recognize the issues of the pharmacies. But what concerns me most is the overall tone of the bill in terms of the areas of innovation, specifically patented drugs. I think that simply has to be altered. It should be altered on a bipartisan basis, because we're not just dealing with the cost of drugs here; we're really dealing with the future of this province.

The Chair: Thank you, Mrs. Witmer. Ms. Martel. A minute per side.

Ms. Martel: I'm quickly searching through the government background paper that talked about the investment that they wanted to make with companies. I think it's \$30 million; I could be wrong. That's obviously not in the bill; that's in the government background papers; but do you want to comment on what, if anything, that will do to the situation to make it more positive?

Dr. Poznansky: Thirty million dollars, to an industry, is a minute drop in the bucket. We just raised, through one of our companies, \$24 million US. This is a small,

tiny company in London, Ontario, with 15 employees. So if you talk about a \$30-million investment, you're talking about—I hesitate to say it—very small peanuts.

The Chair: Thank you, Ms. Martel. Mr. Ramal.

Mr. Khalil Ramal (London-Fanshawe): Dr. Poznansky, first I want to congratulate you on your event yesterday. It was a very successful one.

Secondly, you talk about perceptions. You built all your arguments on perceptions. In your own opinion, how can we change that perception in order to attract more formulas to be patented in Ontario? As we mentioned, the patent issue is not a provincial one; it's a federal one.

Dr. Poznansky: The earlier governments, and I won't say what colour governments, in both Ottawa and Toronto in the middle and late 1990s talked about the innovation agenda and the future wealth of this country. We've heard much less about innovation, both from Ottawa and Toronto, over the course of the last year or two. It's almost as if the innovation agenda was last year's agenda, and now we have to deal with issues like children and taxes and the military—which are important, okay? But how can we have a culture where innovation is last year's agenda? Innovation has to be inculcated into everything we do if we're going to go forward successfully.

The Chair: Thank you, Dr. Poznansky, for your deputation on behalf of Robarts Research Institute.

MERCK FROSST

The Chair: I'd now invite our next presenter, Mr. Gregg Szabo of Merck Frosst, to come forward. Mr. Szabo, as you've seen, 10 minutes' protocol, beginning now.

Mr. Gregg Szabo: Thank you, Mr. Chair. Dear committee members, on behalf of Merck Frosst Canada, we appreciate the opportunity to provide input to those who may recommend amendments to Bill 102. This is a significant and highly complex piece of legislation that has the potential to have major impacts on Ontarians' ability to access needed medications and on the province's ability to attract investment in research and development.

Merck Frosst is a research-driven pharmaceutical company that develops and discovers medicines and vaccines across a broad spectrum of therapeutic areas. Recently, Merck scientists developed a vaccine with the potential to dramatically reduce the incidence of cervical cancer, and our research pipeline includes some exciting new medicines in the areas of cancer, Alzheimer's, diabetes and AIDS.

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Merck Frosst's Canadian headquarters in Kirkland, Quebec, is home to one of only 10 worldwide research facilities. Our investment in R&D in Canada over the last 10 years is over \$1 billion, and our company is consistently ranked among the top 20 R&D spenders in the country.

Canadian scientists at Merck Frosst have developed a number of important advances, including Singulair, a pill

for the control of asthma, which can help free people, especially children, from the difficulties of dealing with inhalers.

Merck Frosst also contributes to the development of science in Ontario through extensive support to institutions such as the University of Waterloo, the University of Toronto and, notably, the Robarts Research Institute.

Merck Frosst recently invested in the new MaRS centre. As part of this investment, we have established an on-the-ground business development presence actively working here to identify new partnership opportunities that may result in more commercialization for Ontario companies and promising innovations for patients.

Over the past few years, our health care system has been increasingly stretched by a growing and aging population. Merck Frosst is committed to working with government and other stakeholders to ensure changes which will make the system more effective and sustainable.

In getting started today, we want to recognize that there are promising elements around Bill 102. We are pleased, for example, that discussions have referenced the need for more patient involvement and an enhanced role for pharmacists in patient counselling. However, we believe that the inclusion of patients on the committee to evaluate drugs and the creation of the citizens' council should be outlined explicitly within the legislation.

The elimination of cabinet approval for drugs receiving a positive recommendation is also a welcome change. In addition, the elimination of limited use and the return of section 8 to its original intent for exceptional cases will mean reduced paperwork for physicians and pharmacists, and is another positive step forward.

I will focus today on three of our major concerns with Bill 102 as it currently stands. The first is access to medicines; the second, therapeutic substitution; and the third, the impact on innovation, jobs and investment.

We are concerned that Bill 102 will not do enough to improve access to medicine in Ontario. While there has been a commitment to additional spending to cover growth in the program, there has not been any obvious resource commitment towards adding new drugs to the formulary. Over the last two years, Ontario has only listed 15% of the drugs approved for use in Canada, while Quebec, by comparison, has listed 55%.

Ontario is also a participant in the national Common Drug Review, or CDR. Since its inception a couple of years ago, CDR has actually rejected 100% of new drugs that represent first-in-class or new therapeutic options.

Although relatively unknown, these facts are astonishing. The seniors of Ontario and patients covered under the Trillium program need to be reassured that changes to their drug system will ensure access to new innovative therapies.

We would like to see this legislation amended to provide for clear benchmarks on access so that patients in Ontario can quickly and reliably benefit from medicines deemed to be safe and effective for use in this country. Specific and measurable targets on the number of new

medicines to be listed and timelines for listing would be a welcome step towards achieving this goal.

Bill 102's commitment to review breakthrough drugs more quickly is a positive step forward. According to the Common Drug Review definition of "breakthrough," however, very few drugs qualify for faster review. We would support a more inclusive definition of "breakthrough" to ensure that innovation is encouraged and Ontarians have rapid access to substantial improvements in therapy.

Another serious problem with Bill 102 is the broadening of the definition of drug interchangeability. The bill gives the executive officer the power to allow the interchangeability of products with the same or similar active ingredients. This is causing a great deal of concern, as it could mean the substitution not just of a generic version of a drug which has come off patent but of an entirely new drug within the same therapeutic class. Different drugs work in different ways for different patients, and it is vital that the province not adopt a one-size-fits-all approach when it comes to medicine.

Advances in medicine have not come overnight. Medicines first introduced are gradually improved upon by subsequent drugs within the same category. The introduction of multiple medicines in specific therapeutic categories paves the way for incremental improvements in science and patient outcomes, and the result is better drugs and better health.

In the case of AIDS, for example, we've developed medicines which have effectively turned what was considered a death sentence into a chronic, manageable condition. Since the introduction of the first antiretroviral 20 years ago, dozens more medicines of this type have been developed, and the result is that AIDS patients today can receive treatment from more effective medicines with fewer side effects.

Furthermore, because patients react differently to different medications, it is essential that doctors have a range of choices available in case patients develop resistance or need to switch medication due to toxicity.

Therapeutic substitution glosses over the differences between various medicines within a class and serves as a barrier for patients and a disincentive for the introduction of innovations within the same class. An amendment should be made to clearly define and prohibit therapeutic substitution and all related practices that go by other names, such as reference-based pricing, maximum allowable cost (MAC) pricing, New Zealand-style pharmacare, or US Department of Veterans Affairs-style restrictions.

I want to turn my attention now to the impact on innovation, jobs and investment. The future for Ontario is the knowledge-based economy. It is one of the reasons the government has focused on education as a key component of its strategy. We need, however, to ensure that there are vibrant companies to employ these bright minds that we are developing. Companies like Merck Frosst are the future homes to many young scientists. In order to have a strong life sciences sector, we need to ensure, in addition to its already strong health research

infrastructure, that there is a strong local market for the goods and services that are delivered.

While spending on medicine within the health care budget is rising, it is important to see this within the broader overall framework of the health care system. Effective use of medicine can reduce other health care costs by a factor of 7 to 1 by avoiding more invasive procedures, reducing and preventing hospital stays, and keeping people healthier. For certain disease areas, the introduction of new medicines over the past decades has led to a decline in hospitalization rates of between 30% and 75%. Increased drug spending in Ontario is driven by demand from a growing and aging population, not increased drug prices. Prices in Ontario are limited by the Patented Medicine Prices Review Board and average 9% below the international median. In addition, prices have been frozen for over 12 years. According to Statistics Canada, over the same period, prices of food in Ontario have risen 28%; shelter, 29%; and transportation, 56%.

We believe it is critical that the legislation be amended to allow mechanisms for reasonable price increases. This is imperative to allow Ontario to remain competitive not only with other jurisdictions in Canada but with jurisdictions around the world.

By creating the new Ministry of Research and Innovation and taking the role of minister, Premier McGuinty signalled to the world the importance of innovation to Ontario. However, a greater alignment of health and industrial policy is required in order to create an enabling environment for health innovation. It is our fear that, if unamended, this legislation will only serve as a disincentive for further investment in the province by the life sciences industry at a time when the global growth in the sector is increasing. Countries—not just the United States and the UK, but emerging economies like India and China—are fiercely competing for their stake in this critical new knowledge economy.

On behalf of Merck Frosst Canada, I would like to thank the members of the committee for listening to our concerns. We hope that continued consultation and dialogue will produce changes in Bill 102 for the benefit of patients while ensuring ongoing investment in innovation.

Thank you very much.

The Chair: Thank you, Mr. Szabo. Thirty seconds each. For the NDP, Ms. Martel.

Ms. Martel: Thank you for your presentation. What would be a more inclusive definition of "breakthrough," in your opinion?

Mr. Szabo: I think we have to look at a definition that would allow for substantial improvements and not just limit it to therapies and diseases for which there is no existing therapy: substantial improvements in issues of efficacy, tolerability; even quality of life I think would be very important to patients, physicians and pharmacists.

The Chair: Thank you, Ms. Martel.

To the government side.

Mr. Peterson: We have had extensive consultations with you, and you told us early in the process that you

didn't want therapeutic substitution or reference-based pricing. That's not included in this legislation, due to the comments of the brand industry. We thank you for those comments.

We're not going to be allowing, if a new—drugs have to stay the same. They cannot—similarity is to envisage a—

The Chair: I have to intervene there, Mr. Peterson.

To the PC side.

Mr. Cameron Jackson (Burlington): Thank you, Gregg, for your presentation. Are you concerned that this legislation offers no other areas of reform, such as prescribing guidelines or health outcomes, efforts that would help, as you've made the point? But weren't you concerned that this legislation doesn't deal with any of that?

Mr. Szabo: I'm certainly not an expert in exactly what the legislation deals with on that topic, but I do recognize that those are very important aspects. We believe in appropriate utilization of medication. We believe in disease management partnerships amongst a broad range of stakeholders to ensure better use of drugs in Ontario.

The Chair: Thank you, Mr. Jackson, and thank you to you as well, Mr. Szabo, for your deputation on behalf of Merck Frosst.

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PELLOW PHARMASAVE

The Chair: I invite our next presenter, Rosanne Currie of Pellow Pharmasave. Ms. Currie, as you've seen, you will have 10 minutes for your deputation, which begins now. Please begin.

Ms. Rosanne Currie: Hello. My name is Rosanne Currie and I'm pharmacist and owner of two rural pharmacies in southwestern Ontario: Pellow Pharmasave in Walkerton and Lucknow Pharmasave in Lucknow. I have provided a map to you in case you're not familiar with the geographical location.

I have spent my entire career in Walkerton, the community where I was born and raised. I chose the career of pharmacy, specifically community pharmacy, because of my passion to help people. I feel that as a community pharmacist I am a very accessible front-line health care professional and a valuable member of the team.

I am here today to share with you the negative impact that Bill 102, under its current form, will have on my business. Most importantly, I am concerned about the negative impact that this bill will have on my patients. One thing I am that proud about practising in an independent pharmacy is the high level of service that is provided to my patients. The patients in my community rely heavily on our expertise, and not only ask us questions about their medications but also their medical conditions. They come to us for support and reassurance, and even the odd hug. We promote health and wellness and aim for disease prevention. I fear I will not be able to continue to provide the current level of service that is

offered if Bill 102 goes through without any amendments.

The compensation by the Ontario government to pharmacies has been flat over the last 16 years, as mentioned by the coalition. There is no doubt in my mind that the funding we have received from the manufacturers has enabled my pharmacies to provide the patient care services over these last number of years. I am thankful that we have had this source of funding and support, as it has allowed me to take my practice to the next level. With this extra source of revenue I am able to have staff in place to support my patient care initiatives. In fact, I have won several awards across Canada for my service levels and patient care. I won the first-ever Commitment to Care Award for patient care in 1993. I shared the OPA Pharmacist of the Year Award with the other Walkerton-area pharmacists for our contributions during the Walkerton E. coli crisis. I received just last week the DOSA award for owner-manager of the year. I am also very proud to say that my pharmacist in Lucknow will be the recipient of the Pharmacist of the Year Award for Pharmasave at the end of this week. These awards are the result of a lot of hard work and commitment to a profession I am very proud of.

While compensation from the government has remained flat, there have been dramatic cost increases to run our businesses. For example, we need to stock more expensive medications; our staff do deserve pay increases; we need to hire trained technicians and pharmacists and continue to upgrade knowledge and skills; technology has advanced, necessitating updating of hardware and software programs; and we have needed to enhance security systems, let alone the rising costs of rent and utilities and insurance.

The cost of carrying drug inventory in a pharmacy places huge cash flow demands on us. Between my two pharmacies, I have over \$330,000 of inventory sitting on my shelves that I get return on only when I receive a prescription for these medications. As I mentioned earlier, medications are becoming more expensive. And I understand that today Mr. Smitherman announced a renouncing of the \$25 cap. The other thing we need to consider is that if a medication expires on our shelf, we are stuck with that loss, unlike in other businesses where, if a product is expiring, they can blow it out at a reduced price. We can hardly do this with prescription medication.

The transparent Bill 102 is supposed to be for the patient. I feel that in its current form it will be very detrimental to patient care. The reason for this is that if the pharmacy is no longer financially viable, I foresee that staff will be laid off; there will be reduced store hours; we will need to reduce our inventory levels, so patients will have a delay in receiving proper treatment; and not carry expensive medications, because we would be losing money. Staffing levels that are cut within the pharmacy translate to increased wait times for patients and reduced services. Regretfully, I may even need to close my pharmacies if they are no longer a viable business. Between my two stores, we employ 16 full-

time employees and eight part-time employees. Six of these employees are the breadwinners of their families.

As we are front-line health care professionals, many patients seek our advice on a daily basis on prescription medications, but also on health issues, including information on over-the-counter medications, herbal medicines and alternative treatments. Time and time again we hear from our patients that we take the time to listen to their concerns, educate them and assist them with solving their problems. I had a patient recently thank me over and over again for my caring and taking the time to get her back on track with managing her medical conditions. She had fallen through the cracks of the Ontario health system because she currently is an orphan patient without any family physician.

We will no longer be able to provide these services. More people will be referred to the emergency department, and we know that these systems are already taxed. Currently, the emergency department refers people to our pharmacy for advice on various issues.

At my pharmacies we offer valuable clinics throughout the year on topics such as diabetes, arthritis, heart health and osteoporosis. We've held very successful flu shot clinics at both of our stores, with over 400 people attending this past fall. I might add that I lose money on these clinics because it costs me more to provide the service than what the government reimburses me—not a very good business decision, I might add, but I continue to offer this service because I support the initiative. This is a service that I will need to eliminate.

The valuable role pharmacists have to play as front-line health care professionals is testimony in the Walkerton E. coli tragedy. I can't begin to tell you the impact that we had during this tragedy. When pharmacies have reduced staffing, resulting in reduced services, reduced hours of service, or have to close as a result of Bill 102, I wonder how people will cope with the next pandemic. We know that it's just a matter of time. Where will people go for assistance?

Another aspect of my business is that we provide extensive services to our nursing homes and residential lodges within our communities. In addition to supplying these facilities with medications, we are active members of multidisciplinary teams and make recommendations to drug therapy. We perform quality assurance audits, we are an active member of infection control, we prepare so that flu outbreak plans are in place, we provide in-services to staff and families on health-related issues and offer after-hours emergency services, just to name a few. There is talk within the bill that there may be changes within this model as well. If this new model is not viable, I will not be able to provide these valuable services to the elderly in my community.

Another service that we have been able to provide to our customers is home visits. It is not uncommon for our pharmacists to do home visits after business hours, especially if a patient has been discharged from the hospital with a complicated medication regime. Within the current system, oftentimes there is lag time between

the nursing agencies' coming into their homes. We often get called after hours to provide emergency services; in fact, I was called to my store twice this weekend. We follow up on drug therapy. We provide community seminars, pill splitting for the elderly, multi-dose packaging to improve adherence, medication wallet cards and delivery service. I will not be able to provide these services if I reduce my staff or decrease store hours of operation as a result of Bill 102.

In January, my husband and I purchased the building beside our current location in Walkerton in the hope of expanding our pharmacy and the services we offer. We wanted to expand our floor space and provide a more wheelchair-accessible environment, more privacy for our patients and a better work environment for our staff. With Bill 102, we need to rethink these plans.

The impact of pharmacies closing in rural communities: People will need to travel farther to a pharmacy. This will be very difficult for the elderly patient who already has transportation issues. Patients may not receive medication in a timely fashion. Another important point to keep in mind is that we do live in a snowbelt area, so it's not uncommon for highways to be closed.

Small-town pharmacies rely on a large percentage of their business to be generated from prescriptions. I know this topic came up earlier today. We do not have large front-shop retail sales volume or corporate drug plans to generate viable business. Whom will these people turn to now: their family physician, which we now have a shortage of? The emergency room? Is this cost-efficient? Rural communities are struggling to keep their merchants' core viable with the arrival of the big box stores.

Dear committee, please be careful in the full consideration of Bill 102. If passed in its present form, community pharmacy services will change drastically. The pharmacy retail business, especially in rural communities, will be decimated. I trust that the underlying goal of this government is not to remove the entrepreneurship from pharmacy and destroy another staple in these small towns. Please ensure that patient care services are protected, and the viability and sustainability of rural community pharmacies. Pharmacists are the most trusted health care professionals.

I am familiar with the amendments that the coalition is putting forth. I support the amendments presented by the coalition. Thank you for your time.

The Chair: Thank you, Ms. Currie.

You have 20 seconds each. To the Liberal side.

Mr. Peterson: You would be a model pharmacist in terms of providing the extra services, and we are going to be allowing you to bill for those fees. We would welcome someone like yourself to the pharmacy council, as we go forward, to make sure that pharmacists are included as front-line health care workers. Thank you for the example you've set.

The Chair: Thank you, Mr. Peterson. To the PC side.

Mr. Jackson: This would have a devastating effect for the community as well as your business.

Ms. Currie: Yes, it would.

Mr. Jackson: Where would the nearest pharmacy be outside of these two communities?

Ms. Currie: It depends on the impact that this bill would have on the neighbouring communities as well. I'd suspect that people would have to travel 20 to 30 minutes to the nearest pharmacy.

The Chair: Thank you, Mr. Jackson.

Ms. Martel: We hope you have an opportunity to participate in the pharmacy council if the government put the provision in the legislation.

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Ms. Currie: That's right. That's a concern we have.

Ms. Martel: Yes. Secondly, can you talk about your own pharmacy in terms of your business that's storefront and not generated by prescriptions? Can you give us an idea of that breakdown?

Ms. Currie: In terms of the ratio, I would say 80% of the business is generated by the prescription revenue, 20% by the front shop.

Ms. Martel: So this has a big impact.

Ms. Currie: It sure does.

The Chair: Thank you, Ms. Martel, and thanks to you as well, Ms. Currie, for your deputation on behalf of Pellow Pharmasave.

CANADIAN TREATMENT ACTION COUNCIL

The Chair: I would now invite our next presenter, Mr. Rosenes, vice-chair of the Canadian Treatment Action Council, and colleagues, and if you may, identify yourselves for the purposes of Hansard recording. Mr. Rosenes, welcome. As you've seen the protocol, your 10 minutes begin now.

Mr. Ron Rosenes: Thank you very much to the members of the standing committee on social policy. My name is Ron Rosenes. I'm the vice-chair of the Canadian Treatment Action Council, and to my right is Louise Binder, who is the chair of the Canadian Treatment Action Council. We very much appreciate the opportunity today to present to the committee. We're here on behalf of our organization, the Canadian Treatment Action Council. We are a nationally elected NGO that gives policy advice and does advocacy on systemic access-to-treatment issues for people living with HIV and AIDS. We are also a member of GRIP. This is an acronym that stands for Get It Right for Patients, an advocacy coalition of 10 disease groups that you'll be hearing from shortly who believe in the importance of the right drug for the right patient at the right time.

We've been pleased as a member of the GRIP coalition to have had several meetings to bring our specific concerns to the Drug System Secretariat. Many of you probably know a fair bit about HIV/AIDS, particularly the fact that treatment requires a combination of antiretroviral drugs, as well as treatments for side effects, toxicities and opportunistic infections. This

results in very complex polypharmacy and the need for very individualized treatment strategies.

Clearly, HIV has always been an expensive disease to manage in the drug system, and as consumer advocates, we have always acted responsibly to provide the government with advice on cost savings. Therefore, we'd like to say that CTAC supports the overall intention of this broad legislative and regulatory initiative, in particular the intent to increase access through savings to the system and to include a role for patients in both the drug evaluation and policy committees that will be established through the legislation.

There have been, however, a number of areas of particular concern to us as representatives of the HIV/AIDS community, first and foremost the wording in subsection 1.1(3), which expands the ability of the government to designate as interchangeable not only drugs that are the "same" but drugs that are also designated as "similar." This language, as originally proposed, is so broad that it could create significant health and safety risks, in our opinion, for people with HIV due to the high potential risk of drug reactions and also drug-drug interactions.

Additionally, the potential to develop resistance to HIV medications is very high and must be carefully monitored at all times by the physician. In our discussions with the minister as part of the GRIP coalition, we were able to explain the potential health and safety risks of the language being written so broadly. As a result, the minister has agreed to amend the definition to limit the definition of "similar active ingredients" to "binding agents and fillers."

We expressed our concern at the proposal to add section 3 of the bill, which would expand the ability of the pharmacist to interchange drugs that had "similar" active ingredients even where the drug was not designated as interchangeable, and we are pleased that the minister has agreed to remove section 3 and to restore the original subsection 4(5) in the Drug Interchangeability and Dispensing Fee Act.

The other area of particular concern to CTAC is with regard to consumer expertise on the committee to evaluate the drugs and on the policy advisory committee that is also being contemplated. While we are pleased to see the addition of two patient representatives on the committee to evaluate drugs and to the policy committee, we strongly recommend a formal selection process as well as a formal accountability mechanism to be developed to ensure that those patient representatives get input from relevant disease groups for which drugs are under consideration by the committee to evaluate drugs.

We recognize that many aspects of this legislative reform will be dealt with by regulation and policy guidelines, and we are pleased that the minister has agreed to continue to consult on an ongoing basis as these are being developed.

Thank you for your attention. We're pleased to answer any questions that you may have.

The Chair: Thank you, Mr. Rosenes. We have about 90 seconds or so per side, beginning with the PC side.

Mr. Jackson: Thank you, Mr. Rosenes. Is it possible to find out where this wording is? We're pleased that the minister treats you with that kind of respect, but he certainly doesn't with this committee. I wonder if we could get a copy of these amendments that the minister has agreed to. Mr. Chair, could I ask you to formally request that?

The Chair: You can. I will direct legislative research and any others who need to participate in that. Or is it to the—

Ms. Wynne: Mr. Chair, the amendments will be introduced at the time that has already been established by the subcommittee. If the minister has had a conversation—

Mr. O'Toole: Take your own time. Thanks.

Ms. Wynne: Mr. Jackson is asking for something.

Mr. Jackson: This isn't the first time this has come up in the short time that I've been on the committee. There are several of these issues. I think that the sooner we can get them, Mr. Chairman, the better. It's a request for information. I don't expect our deputants to have that answer. I'm pleased that they were getting a straight answer, but we certainly would like to have any of these as soon as possible. I think it's the decent thing to do for everyone else. Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Jackson. We'll try to process that. Ms. Martel.

Ms. Martel: Thank you for your presentation. I just have to say on the record that I would appreciate that information as well. The minister made it public this morning that he was going to make a change and get rid of the 25% cap. That was fine to make public. We didn't see that until after we started the committee, but now we find out there are some more amendments, obviously, and some commitments that he's made. I think the committee has a right to get that. So this has nothing to do with you folks, but it is a matter of—

Mr. Rosenes: We appreciate that. We also appreciate the fact that the timelines have been very tight for us as well. We've had to exert our own pressure to make sure that our voice is among those voices being heard. We may be privy to some information here that's not in front of you yet, but it's still, to our minds as well, a work in progress.

Ms. Martel: We appreciate that.

Mr. O'Toole: Mr. Chair—

The Chair: Thank you, Ms. Martel. I would just like to advise the committee with regard to the question of amendments. As you're aware, June 6, 12 noon is the amendments deadline, and clause-by-clause consideration will be that same afternoon.

Mr. O'Toole, do you have a point of order, an actual point of order?

Mr. O'Toole: Yes, Chair. My point of order would be, if there are reports or consultations, or reports of those consultations, how come the members of this committee don't have them? When we have the minister making announcements outside of this process, it's making a complete sham of these professional people

who are coming forward to us. I'm asking for those reports on those consultations to be tabled with members of this committee, including the amendments or proposed amendments.

The Chair: Ms. Wynne, would you care to reply?

Ms. Wynne: Yes. Mr. Chair, when legislation is in the process of being amended, there are public hearings going on, and the people who have been consulted with by the ministry before the bill was written continue to be talked to. The ministry has relationships with those groups of people, and it's an ongoing process. I think it's a sign of strength that those discussions are ongoing. All of that—what we're doing here and the conversations with the ministry—is what feeds into the final amendments that come forward according to the subcommittee report.

That is absolutely the way it works. When those amendments are ready—and I assume that when the NDP and the Tories have their amendments ready, they'll bring them forward at the same time.

Ms. Martel: To the same point, if I might, I think the issue here is that the minister thinks it's okay to make some of his changes public, which he had no trouble doing at the media availability at 8:45 this morning. He was quick to tell all the media that he was going to make this particular change with respect to the 25% cap. That was fine to relate to people. Now we find out this afternoon that he's made agreements on other things that somehow or other are not public information, and that's what I resent about what's going on here.

Yes, we will all bring forward our amendments, but yes, it's also clear that the minister picks and chooses what he wants to make public. I guess he was trying to get something back in terms of the negative perception that's been out there with respect to this bill, so he makes the announcement that he does this morning. And that's okay, but now we find that other commitments have been made, but we can't get copies of that. That, for me, is what the issue is; that's what I disagree with.

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The Chair: Thank you, Ms. Martel. As Chair of this body, I can only say that the parliamentary assistant to the relevant minister has heard these remarks, and it is at his leisure what to do with it.

Mr. O'Toole.

Mr. O'Toole: I'm also just putting on the record at the indulgence of the Chair here that the Coalition of Ontario Pharmacy today made it very clear that they have been unable to meet with the minister. So what is the price of admission? Do you have to buy a fundraiser ticket? That's the implication. It's Let's Make a Deal. Do you understand what I'm saying?

Mr. Rosenes: May I please respond to that?

Mr. O'Toole: I'm not really posing it to you; I'm posing it to the Chair.

The Chair: I'll ask you, sir, to bring your remarks to a close within 30 seconds, please.

Mr. Rosenes: I would just like to emphasize and make sure that everyone understands that both Louise Binder and I are volunteers who are elected by a national

constituency to do our best to make our voice heard from our community, and that is all we have done. We have sought, as community members, to get a meeting with the Drug System Secretariat, and we are simply appreciative of the fact that we have been able, and not without a lot of asking, to get our voices heard.

The Chair: Thank you, Mr. Rosenes. Thank you, members of the committee, for your questions and comments on these issues.

GET IT RIGHT FOR PATIENTS COALITION

The Chair: I would now invite on behalf of the committee our next presenters, Mr. Frank Viti and Louise Binder of the Get it Right for Patients Coalition. I invite you to please begin.

Ms. Louise Binder: Thank you very much. My name is Louise Binder. I'm the chair of the Canadian Treatment Action Council and I am a member of the Get it Right for Patients Coalition. I'm also a woman living with HIV/AIDS. I repeat what my colleague indicated, which is that all of my work is done as volunteer work. I don't belong to any political party, and I didn't buy any tickets for anything.

Just so you know, the Get it Right for Patients Coalition is a 10-member organization. That 10-member group came together in a very short period of time as a result of this particular legislation because we, like all of you in this room, are concerned that Ontarians deserve a drug system that will give patients better access to the drugs they need and also give taxpayers better value for the money we spend. While we are certainly concerned about all of the other stakeholders in this process, by far our greatest and really our sole concern is with patients.

We became a unifying voice to protect the interests of the current legislation where we see it as a good piece of legislation, and also to take a look at Bill 102, which, in a number of ways, we also think has very many benefits for patients in this province, although it certainly isn't without the need of some changes to it.

We're very pleased to see the end of generic rebates. That's been a problem for a long time in this province. We're also very happy to see the streamlining of the section 8 process, which has held up a lot of important drugs that people have needed and has wasted a lot of doctors' time in filling out unnecessary paperwork for those patients. We're actually quite in favour of the creation of an executive officer, rather than the cabinet process that was previously in place, to make decisions about these drugs. Most of all, perhaps, is the inclusion of the patient voice in the committee to evaluate drugs and the creation of a citizens' council, also an opportunity for patients to have a voice.

We're also very pleased to see more of a recognition of the role of our pharmacists. They certainly do have an important role, greater than the counting of pills. They're very, very knowledgeable experts on medications. Certainly, we're glad to see them have a greater role.

There are two primary concerns that we do have with this legislation. They deal with the "interchangeability"

language in the legislation and some aspects of concern around the accountability of the executive officer. I'm going to allow my colleague Mr. Viti to take us through those two areas.

Mr. Frank Viti: Specific to interchangeability, the Get it Right for Patients Coalition was highly alarmed by the initial language in Bill 102 that would, we felt, expand the interchangeability to include similar drugs, not only same-to-same drugs. We also were concerned about the new dispensing powers that would be extended to the dispenser, or pharmacist, which we felt would allow automatic switching of drugs, even when they were not designated as interchangeable and were similar. So that has caused us a lot of concern over the last two weeks.

Once again, we have concern with an issue specific to what accountability or re-review process exists when the executive officer has deemed a drug not to be listed on the formulary.

With those two areas of concern, we engaged in a comprehensive discussion with the minister and members of his staff. We want to thank, first and foremost, the minister and every member of his team for finally listening to the patient voice. As patients, we have only come together as a coalition recently. We were welcomed, and they have been listening to our issues and concerns.

Moving forward, we believe that the Get it Right for Patients Coalition and the minister, as of today, have an understanding—we don't have any documents, but we have an understanding—that the minister and his team are committed to protecting patients' health and that there will be some changes in terms of interchangeability. We are confident that the current DIDFA legislation will protect patients when drugs, on the rare occasion, are deemed similar, and that the no-substitution clause will end up protecting, on most occasions, patients' health.

We have helped the minister think through a mechanism that will work to have a re-review of a negative decision specific to the executive officer not listing a drug. We will continue to work with his team specifically toward a process that we're confident will protect patient health.

Finally, we want to outline four specific detailed recommendations for your committee to consider that we think would make Bill 102 a very strong piece of legislation, and which would not in any way compromise health outcomes. We'd like to take you through these four very detailed recommendations.

First and foremost, an amendment, subsection 1.1(3.1), which defines similar active ingredients for the purposes of interchangeability in subsection 1.1(3): We would recommend strongly the adoption of these new definitions of interchangeability. Basically, the bottom line is that no interchangeability for same-to-same and same-to-similar drugs without the no-substitution protection will be protected. No substitution when chemical entities are not the same would also be protected.

The second issue, the deletion of section 3: Louise, maybe you can take us through it.

Ms. Binder: One of our concerns was that it appeared that the legislation, at first reading, was going to give an opportunity for pharmacists to automatically interchange a drug for another drug that was similar but not the same. In discussions with the minister, we explained the potential safety and health outcome risks, particularly for some very serious disease groups that use a lot of different medications, and where those medications are actually somewhat similar but have a very different interaction with patients. The minister, as I understand it, is considering the removal of the section in Bill 102 that was going to expand the pharmacists' interchangeability powers back to the original language in the legislation. So we're very pleased to see that, because we think that's a much better protection for patients.

Mr. Viti: Specific to section 6 of the bill, we wanted to have some clear language that says that nothing should be construed as allowing therapeutic substitution within Bill 102. We'd like to see in section 6 an amendment that states clearly that the act, or DIDFA, should never be construed to permit therapeutic substitution.

Finally, on breakthrough drugs.

Ms. Binder: Breakthrough drugs are very important for illnesses that are life-threatening or for very serious chronic and debilitating illnesses. At the moment, we really wait far too long to get breakthrough drugs approved for reimbursement in Ontario.

The proposal that we have made to the minister, and which is being considered, is that breakthrough drugs will be defined as those drugs which demonstrably improve serious health outcomes. We'll include in that definition demonstrable quality-of-life indicators, so that people can in fact go back to work and be fully functioning members of our society, our community and our economy. That is language which I believe you will see coming forward through regulation and we would strongly recommend that that kind of language be accepted by your committee as something the minister should adopt.

1800

Mr. Viti: Finally, we just want to acknowledge the minister and his team's invitation to help him through the regulation policies and procedures process over the long term. As a coalition of patient organizations, we accepted the minister's invitation.

The Chair: Thank you. We have minimal time for each side, beginning with Ms. Martel.

Ms. Martel: You said that the definition of "breakthrough" is going to come by regulation. I wonder if you'd like to see that in legislation.

Ms. Binder: I would certainly always, of course, prefer to see as much in legislation as possible, for obvious reasons.

The Chair: To the government side.

Mr. Peterson: You have indicated that you are happy that the rebates are being eliminated, even though many pharmacists came through and said this is a death knell of their industry. Would you expand on that for me?

Ms. Binder: Yes. I don't think that the issue of rebates is the appropriate way to respond to dealing with the generic drug industry in its relationship with pharma-

cists. Why is it that we, in this country, pay the highest generic drug prices of any other industrialized country?

The Chair: To the PC side.

Mr. Jackson: I'm fascinated that anywhere from a quarter of a billion to half a billion dollars in cuts will be experienced, predominantly by the innovative research drug manufacturers in this country. They've been hugely helpful to the AIDS agenda and the changes there. Much of the new, innovative drugs will move to other jurisdictions, hopefully in Canada, where we can put clinical trials in place. Are you not concerned about that aspect of the impact of this legislation?

Ms. Binder: I'm not convinced that that is going to be the impact of this legislation. There's not very much R&D done in this province right now and I'm not convinced that that is actually going to be the impact.

The Chair: Thank you to you both, Ms. Binder and Mr. Viti, for the deputation from Get it Right for Patients Coalition.

CANADIAN AUTO WORKERS

The Chair: I'd now invite, on behalf of the committee, our final presenter of the afternoon, Canadian Auto Workers: Mr. Paul Forder, director of government relations for CAW, and colleague. Gentlemen, your time begins now.

Mr. Paul Forder: Thank you very much, Mr. Chairperson. We do appreciate an opportunity to come before this committee. We wish Dwight Duncan wouldn't have the temperature so warm in here. We're not going to tax your patience. We know you've heard probably about everything, but we do want to lend our support, very publicly, to the government and this bill, this initiative, especially as we see the baby boomer bulge moving through the system. This is an initiative that is long overdue.

I'm not going to read our submission. You have it. We can go through it. I'd rather point out a few points. With me is our researcher, Corey Vermey, who's on the health file for the Canadian Auto Workers. We have a lot of experience in negotiating drug plans. It becomes increasingly more difficult as we move through this modern day of globalization, trying to ensure that coverage is there for people in their twilight years. We see this initiative as very positive, very helpful and very timely.

The real issue here for us is we've had an experiment since 1993 with the big three, General Motors, Ford and Chrysler workers, together with our partner, Green Shield, a not-for-profit organization. We've moved into a conditional formulary plan and we have had no problems whatsoever. You've heard from Dave Garner, the CEO of Green Shield today, and I just confirmed with him again: absolutely no problems. Where a physician demands a particular drug, it's not questioned and it's accepted. But for the most part, our people want a drug that will do the job and at the same time don't want to have it enormously costly for even those who are covered, because there are only so many dollars to go around when you're trying to expand the plans and

you're trying to negotiate collective agreements with our employers, and that's just since 1993. So we see this as very positive, very similar to where the government is moving and we think it makes a lot of sense.

We want to stress the awareness program: promoting appropriate use of medication. In our organization, together, again, with Green Shield, we've created what we call the medication awareness program. What that does is absolutely fascinating. I was in charge of the retired workers' department for several years at the CAW. We would bring in pharmacists and we would tell people to bring all of their medication to their physician. It was absolutely mind-numbing, the drugs they would have. They would bring in satchels of drugs, many that were incomplete prescriptions that demanded that they use all of the medication in order for it to be effective, conflicting drugs prescribed by different physicians—they'd been travelling or on vacation or in Florida. It was just an absolute nightmare, a chemical disaster walking with our seniors.

We tried to emphasize that they carry this card with them all the time, wherever they go, so that whatever happens to them, they can turn to any physician, any health care specialist, and he or she will know what kind of medication this person is on and they'll be able to appropriately assess it and not prescribe conflicting drugs. That has got to speak well for enhancing the health of seniors, retired workers, where this program is in effect.

We don't see any value in trying to play footsie with those who would rather spend all their money promoting name brand drugs. It doesn't make any sense to us, because when you spend more on name brand promotion than you do on research and development, that says something about how inadequate the system is. We think it's an appropriate step to move in this direction. It will save many dollars for the health care system. This is the fastest-growing expenditure now, as we all know, in public and private health care, and you've got to get control of it. We salute the government for taking this initiative. Of course, we would like to see a national pharmacare program where people down the road would never have to pay for a drug, and that's something we'll continue to push for in the future, as a trade union concerned about all people having access to medically necessary drugs to enhance their lives, protect their lives and ensure that their standard of living and health is maintained always.

Mr. Corey Vermey: If there are specific questions—I know there are a number of nuances that are probably not captured in our submission in regard to comments made today by the minister, the issue of interchangeability being one of those elements.

I was just in attendance at a national pharmaceutical strategy stakeholders' consultation being held today, and in the room were a number of the larger Ontario employers—Inco and Canada Post being two that come to mind—and a number of other representatives from the Ontario Federation of Labour and ourselves. It's clear that there is considerable effort under way nationally that

has flowed from the Romanow report, the Kirby report, the federal-provincial-territorial first ministers'-deputy ministers' efforts to move forward, and we applaud Ontario because you have a piece of legislation before us that is very much keeping in step with, if not ahead of, the national pharmaceutical strategy. So I think that's to be noted. It's not the complete answer, but it is a very significant answer to the rising costs of drug spending and the sustainability, which is a question we have to answer if we're going to also answer the question of access for those who are not under public coverage, who are paying out of pocket and those particularly who do not have unions that can bargain fairly significant benefit packages, including drug coverage. That's a significant number of people in Ontario, and we don't lose sight of their interests either.

The Chair: Thank you, gentlemen, for your deputation. About a minute per side, beginning with the Liberals.

Mr. Peterson: Thank you very much for making your presentation. This whole drug reform was driven by two things: First, the industry asked for reform; the rebates had gotten so large that they say it's unwieldy. Secondly, we needed to contain some of the costs of the medical system so we can maintain one tier. Everyone knows that one of the great reasons for investing in Ontario by the automobile industry is the inexpensive nature of our health care system. It's so much less expensive than other jurisdictions.

Your organization and many organizations have gone for generics first. Can you explain that policy to us?

Mr. Vermey: It's very clear that the US auto manufacturers have claimed that their health care costs as a component part of an automobile is US\$1,500. The comparable cost in Ontario is, I believe, \$125 per vehicle. So it's an enormous differential. Even as the exchange rates have worked against the provincial industry—

The Chair: With apologies, I will have to intervene there. To the PC side.

Mr. O'Toole: Thank you very much. Just a couple of things. Everything I read about today as one of the competitiveness issues is the more recent discussion in the auto sector, problems with pensions and hangover liabilities of the benefit plan. In fact, UAW, your partner in the States, just passed a resolution to diminish services to retirees. I can tell you, having worked for 12 years in personnel with General Motors in Canada, that they will be doing exactly the same thing. Governments delist stuff like chiropractic, like physiotherapy, like optometry. It goes onto the employer's cost of benefits and, as such, they're becoming unaffordable. In fact, your competitiveness was recounted today by the Robarts Research Institute, which said that the auto sector is no longer competitive. If you're reading anything, irrespective of what you've said, this is a serious challenge. The costs of drugs are going up, regardless if they're generic or name brand. I'm surprised at your support for this legislation. I'm shocked.

The Chair: Thank you, Mr. O'Toole. The floor is now Ms. Martel's.

Ms. Martel: Thanks for being here today. I have this question. One of the other goals that the minister has stated on different occasions about the bill is to find cost savings so that these savings can be reinvested back into the Ontario drug plan, but I note that in the legislation there is no provision to say that any savings that are achieved will be reinvested into the drug plan, which of course makes me concerned that the money is going to go to the consolidated revenue fund. Do you think that if the government meant what it said, we should be seeing an amendment that says, "Cost savings from this bill are going to be reinvested into the Ontario drug plan"?

Mr. Forder: I wouldn't suggest that every time a government initiative makes a saving, it has to be redirected

back into that particular program. All kinds of funds are collected and should be appropriately earmarked for the need. That's how I'd deal with that one.

Mr. Chair, could I respond to Mr. O'Toole's comment, briefly?

The Chair: Mr. Forder, I'd like to inform you that your time has now expired. You're welcome to confer with him privately afterward. I'd like to thank you on behalf of the committee for your deputation from the Canadian Auto Workers.

If there is no further business from members of the committee, this committee stands adjourned until 9 a.m. on Tuesday, May 30, in this room.

The committee adjourned at 1813.

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Mardi 30 mai 2006

**Standing committee on
social policy**

Transparent Drug System
for Patients Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur un régime
de médicaments transparent
pour les patients



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 30 May 2006

Mardi 30 mai 2006

*The committee met at 0901 in committee room 1.*TRANSPARENT DRUG SYSTEM
FOR PATIENTS ACT, 2006
LOI DE 2006 SUR UN RÉGIME
DE MÉDICAMENTS TRANSPARENT
POUR LES PATIENTS

Consideration of Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act / Projet de loi 102, Loi modifiant la Loi sur l'interchangeabilité des médicaments et les honoraires de préparation et la Loi sur le régime de médicaments de l'Ontario.

ONTARIO PHARMACISTS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I'd like to call this meeting of the standing committee on social policy to order. As you're all well aware, we're here to deliberate on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act. On behalf of all my colleagues here at the Legislature, I'd like to welcome you.

I'd now formally like to welcome our first presenters of the day. They are Mr. Marc Kealey, CEO of the Ontario Pharmacists' Association, who's joined by his colleague, Deb Saltmarche, vice-president, professional affairs. I would respectfully remind all those who are listening that the 10-minute rule is in force. Any time remaining afterwards will be distributed evenly amongst the various parties. As there's an extraordinary interest in this bill, as you can imagine, the timing, as I say, will be very strictly enforced.

Just to inform the audience, there is an overflow room next door. Your 10 minutes begins now.

Mr. Marc Kealey: Good morning, Mr. Chair, members of the committee and guests. My name is Marc Kealey and I'm the CEO of the Ontario Pharmacists' Association. I'm joined here this morning by my colleague Deb Saltmarche, who's our vice-president of policy and professional practice at the Ontario Pharmacists' Association, and she's also a pharmacist.

Yesterday, this committee heard the facts from individual front-line pharmacists across Ontario. One by one, they put their businesses on hold for a day and came

here to tell you what will happen to them and their patients if Bill 102 goes through in its current form. Let me summarize what they said: People across Ontario will find pharmacies reducing their hours, laying off staff and cutting the patient care services they provide. Some people will be without a health care provider in places where the only health care provider, or the most accessible health care provider, is a pharmacist who is forced out of business.

On April 13, when I participated in Minister Smitherman's announcement of Bill 102, I warned that this situation could occur. Let me quote my own words from that day: "We do have cause for concern on the future sustainability of pharmacy."

At that time, we at OPA chose to emphasize both the dangers of Bill 102 and the successes and advances it contained for the pharmacy profession in this province, and let me say why.

For the first time, the bill brings pharmacists recognition of their professional skills and abilities and their capacity to serve in new ways as front-line health care providers and be reimbursed for doing so. That represents a tremendous step forward for pharmacists, and there needs to be recognition and support for making this happen in Bill 102. In fact, our association has been fighting for 16 years to realize these goals.

Since the introduction of Bill 102, we have been insistent and relentless in our demands that the government provide clarity and transparency in its assessment of the impacts of Bill 102 and address the concerns we have raised from the start about the sustainability of our profession.

The litany of heartfelt reports and pharmacy-by-pharmacy analysis you heard yesterday and will continue to hear today demonstrates that those concerns have not yet been addressed. Instead, they have escalated from concerns to fears to warnings of dire consequences. In the absence of clarity and understanding, what we've seen fill the vacuum is fear and apprehension. We've seen from some quarters unsubstantiated and exaggerated claims about the impacts of Bill 102, numbers not backed up by facts, and tactics that generate noise but not solutions.

OPA's approach to Bill 102 has been to work within the process in good faith to achieve the government's stated objective: to ensure the sustainability of the drug system for all Ontarians. I know this is a goal that crosses

partisan lines. For that reason, OPA comes here today to the members of this committee with solutions that will fix Bill 102. Other presentations yesterday, today and on June 5 are spelling out problems. We're here to share with you amendments to the bill that represent our answers.

The situation we face, as you have heard, is that this bill threatens the sustainability and financial viability of pharmacy. Specifically, OPA calculates a real-world net loss of \$269 million to pharmacy in Ontario. We base this calculation on the proposed elimination of rebates at a rate of 60% from generic manufacturers, coupled with the 20% level of reinvestment in professional allowances proposed by the minister at our annual general meeting on May 13.

As individual pharmacists have described to you, a loss of this magnitude means anything but business as usual. It means across-the-board reductions in the services pharmacists provide or it means non-sustainable pharmacies. Non-sustainable pharmacies mean patient access to medications is put at risk, and frankly, in 2006 in the province of Ontario this is an unacceptable proposition.

Bill 102, as I noted on April 13, proposes to reimburse pharmacists for providing value-added professional services. But community pharmacies are businesses, and those businesses must remain viable if the pharmacists who run them are to deliver these services to patients and ensure access to medications.

We are here today with this committee and the government to provide specific amendments to Bill 102. Our aim is to enable further improvements through the regulations and to ensure we have both a sustainable drug system and continued access to pharmacists' services and medications for patients. We want to assist the government to meet its patient care objectives: improved health care outcomes and increased accessibility of health care services.

I want to elaborate our proposed amendments this morning with reference to four key issues: ensuring immediate and long-term sustainability; entrenching the pharmacy council in Bill 102, as well as OPA's role; clarifying and making transparent certain crucial issues for pharmacists in the wording and intent of the bill; and defining the regulatory process and fully engaging OPA as a partner with the government in the regulations.

To ensure sustainability, we propose amendments to Bill 102 to define and differentiate rebates and professional allowances and to institute a robust code of conduct. The provision of professional allowances by generic drug companies and their acceptance by community pharmacists must continue, because it provides the financial basis for the provision of many professional services and supports the nuts-and-bolts infrastructure of community pharmacy, and frankly, this drives efficiency in the health system. The abolition of professional allowances is not adequately compensated by other measures in Bill 102, and this unbalanced equation is, in our opinion, the Achilles heel of otherwise progressive and useful legislation by this government. We further propose

that no limit be placed on the level of investment permitted under the code of conduct governing professional allowances.

0910

There's a clear choice here: The only alternative to this approach that will ensure continued access to pharmacists' services is a further increase in the dispensing fee to nearly \$11.

In the regulations, we have specified amendments to remove the \$25 cap on the markup in order to ensure patient access. We were pleased to learn from the minister yesterday that this amendment is now advocated by the government. We also seek to ensure that the negotiation of reimbursement and dispensing fees is addressed in the regulations in a manner supportive of the sustainability of pharmacy.

On the pharmacy council and the role of the OPA, we propose that Bill 102 be amended to entrench the council and to define it, and to include in its duties the definition and implementation of professional services. We propose amending the bill to recognize OPA as the exclusive agent for pharmacists in Ontario and to specify that all fees and other components of reimbursement shall be determined through negotiations with the Ontario Pharmacists' Association. The composition of our organization, as evidenced in the broad-based nature of our board, enables us to be truly representative of pharmacists and pharmacy. And at these hearings, you are hearing pharmacist after pharmacist steer you toward OPA for the well-considered solutions that our amendments to Bill 102 represent.

Certain crucial issues for pharmacists must be addressed by clarifying and making transparent the language and intent of Bill 102 through further amendments we propose.

On interchangeability, we are calling for a definition in the Drug Interchangeability and Dispensing Fee Act, of DIDFA, of "similar" drugs; for the listing of off-formulary interchangeability, or OFI, drugs in a part of the formulary; and for a delay in the implementation of the changes on interchangeability to ensure the indemnification of pharmacists.

We are seeking clarity on the process for defining exceptional access and conditional access drugs and assurance that these medications will be listed and reimbursed appropriately.

Finally, our amendments call for defining the regulatory process and fully engaging the OPA as a partner with the government in developing the regulations associated with Bill 102. To date, the draft regulations, time and consultation plan are unknown. These regulations cover the dispensing fee and the reduction on the markup. As a result, in spite of our best efforts, we have yet to establish a full sustainability evaluation of the impact of the regulations associated with the bill.

These amendments represent OPA's solutions to the problem with Bill 102 that we and so many individual pharmacists have identified. We will be submitting our detailed amendments by Friday. We ask that this com-

mittee move forward to accept and implement what we present as carefully considered and workable solutions that will fix this bill. We wish you luck in your deliberations.

The Chair: Thank you, Mr. Kealey. I would like to thank you on behalf of the committee for your deputation on behalf of the Ontario Pharmacists' Association. Should you have any written materials, please feel free to leave those as well with the committee clerk.

GREG STREPPPEL

The Chair: I would now invite our next presenter, Mr. Greg Streppel. I invite you to come forward. I understand you'll be using PowerPoint, so I'll give you a moment or two to set that up and then we'll begin.

Mr. Greg Streppel: Good morning. Thank you for your presence here today. My name is Greg Streppel. I'm a community pharmacist with a practice in Elmira, Ontario. I'm going to discuss my pharmacy and the services we provide, my concerns regarding Bill 102 and the impact I believe it will have on my pharmacy and my clients, and some suggestions for the committee.

I am one of the co-owners of Woolwich Centre Pharmacy. We're an independent, patient-focused pharmacy. We service a largely rural community about 15 minutes north of Kitchener-Waterloo. Our clients include the usual walk-in folks from the immediate community, five retirement and group home residences, rural people, including a large Mennonite community, and the physicians and other health care providers in our community. We employ one full-time pharmacist and five part-time technicians. We don't sell perfume, potato chips or soda pop. The services that we do provide include prescriptions and OTC medicines, with the appropriate counselling for those products. We also provide, at no cost, first aid, wound management and herbal remedy counselling, clinical services such as diabetes and insulin management for our retirement home clients, medication review and drug concern resolution for all our clients, and referrals to other health care providers when appropriate.

Other services that we also provide at no cost include dosette and compliance packaging, blood pressure monitoring, glucose monitor teaching, rural delivery, a drug information service for health care professionals in the community, our annual flu and West Nile disease prevention campaigns and smoking cessation guidance.

Minister Smitherman has stated that Ontarians have not received good value for the drug budget expenditure. I can't imagine this statement reflecting pharmacy services. No other profession is more accessible and provides so much for so little.

My main concerns with Bill 102 have to do with the very specific ways in which it will intend to decrease compensation to pharmacists, namely, a reduction in the allowable markup from 10% to 8% and the elimination of generic allowances.

While the reductions in revenue are spelled out very clearly, the bill's promise to protect pharmacies from

drug price increases from companies and the promise to pay pharmacists for cognitive skills are largely undefined. This makes most independent pharmacists very scared due to the uncertainty.

Another aspect that worries me is that the bill is meant to save public money by governing how prescriptions for Ontario drug benefit clients will be handled. The truth is that we can't have one drug price for a senior and another drug price for other folks who don't access the Ontario drug benefits, so the consequences of the bill go far beyond seniors and people who receive social assistance.

Additionally, other insurance payers will follow the precedent set by the ministry. They will say, "If government is only paying so much for this, then that's all I'm going to pay too." We have ample evidence of this already in practice.

What this means for our clients and patients is that, in order to try to be viable, we'll have to reduce our hours of operation, lay off staff and reduce or eliminate many of the patient care services that we provide, which are substantial. This will result in poor outcomes for our clients and patients.

In its current form, the bill will make my practice nonviable. Many other independents are in the same position. If a lot of us close, what you'll see is a shift of clients to high-volume, low-service pharmacies. That will leave many patients under-served and overburdened to access their medications and timely drug information. This will in fact result in greater long-term costs, not savings, because with less access to pharmacists, patient visits to physician offices, clinics and hospitals will increase. Greater costs will also result from the suboptimal drug management of chronic diseases like diabetes and asthma. You'll see those costs accumulate not in the next year, but maybe in two years, five years, 10 years. Also under in this scenario, another consequence will be the net migration of pharmacists out of Ontario to other jurisdictions. This will exacerbate the current pharmacist shortage.

I have some suggestions to make to the committee. I would like to see the committee urge the ministry to work with the OPA to clarify and define unclear aspects of the bill, which are causing so much uncertainty. I would also like you to urge the ministry to ensure that pharmacies are viable. We have families to support, and our work has value and deserves fair compensation. Lastly, I would like you to urge the ministry to develop better physician education initiatives to improve prescribing patterns. One such initiative that we could borrow from is called the therapeutics initiative, located in British Columbia. It has provided evidence-based best-practice information for drug utilization to physicians and pharmacists in that province for 10 years.

Thanks for your attention. I can answer any questions.

The Chair: Thank you, Mr. Streppel. About a minute each side, beginning with the Conservative side.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): Thank you very much for coming here from Elmira. You must have fought the traffic, as I did, this morning.

I do appreciate the presentation you've made. You focused, in your suggestions, on number 3, the improvement in prescribing patterns. That is one of the things that is totally lacking from the bill. You feel that it is an initiative that could have an impact on—

Mr. Streppel: Yes. We've seen this in other provinces, in British Columbia and Saskatchewan, where there have been initiatives that have tried to improve prescribing patterns by providing unbiased information to physicians. I think physicians are dealing with life and death situations every day. They probably don't have as much time as we would all like them to have to know drug therapy to its best extent, and they receive a lot of biased information. If we could have some kind of initiative to provide them with unbiased information, make a selection that economically makes sense and is in the best interests of patients also, that would work to some degree to alleviate the increase in the drug budget, which we all know is unsustainable.

0920

Mrs. Witmer: And we've heard that from a couple of people.

The Chair: Thank you, Mrs. Witmer. We'll now offer the floor to Ms. Martel of the NDP.

Ms. Shelley Martel (Nickel Belt): Thank you for being here this morning, Greg. If I can paraphrase you correctly, you've said that the reductions in revenues are spelled out clearly in the bill but the new compensation package is not defined. It's kind of like buying a pig in a poke, because you know what you're losing, but you have no idea of how you're going to gain what the government promises to give you.

There's a \$50-million package out there essentially for cognitive services. I don't know how that's going to be divvied up. There are lots of pharmacists out there. I'm not sure how far \$50 million is going to go to actually pay for the services you do. When you're providing cognitive services, I assume you're going to need someone else in your pharmacy to carry on your other work while you're trying to provide cognitive services to some of your patients.

So in terms of what you see, what are your concerns? The government is saying, "Don't worry. We appreciate the role of pharmacists," but the bill is essentially null and void in terms of what that new compensation package is going to be.

Mr. Streppel: It hasn't been spelled out clearly. There's quite a big shortfall with the reduction in allowances. The reduction in allowances is not currently being made up with the cognitive services package, the money has been earmarked so far. Also, the dispensing fee increase is inconsequential. So there's a big deficit there, and there's also no way to know at this point how that money is—

The Chair: Thank you, Ms. Martel. We'll offer it to the government side. Mr. Peterson.

Mr. Tim Peterson (Mississauga South): Thank you very much for your presentation. I compliment you on the full range of services that you're providing at your

pharmacy. As you know, through these cognitive services, we want to remunerate those, and we take seriously your suggestion that those be better defined. Mr. Kealey, the CEO of OPA, whose organization I think we've met with over 30 times, also has pointed this out to us, and we'll work on this.

We also have gone forward with giving you a full 8% markup. That 8% markup was previously met by price increases, and we intend to restore that for you as well as increase your fee with the cognitive services. As well, we're talking about an education allowance. What is the volume of the rebates that you've been looking at for your pharmacy?

Mr. Streppel: The volume of rebates probably approaches between 5% and 10% of our revenue.

Mr. Peterson: That's on your total revenue?

Mr. Streppel: Yes.

Mr. Peterson: Do you want to keep that information confidential, or can you be a little more specific for us?

The Chair: Thank you, Mr. Peterson. Regrettably, that question will have to remain rhetorical for now.

Thank you, Mr. Streppel, for your presentation and your audiovisual support.

MAIN DRUG MART GROUP

The Chair: I'd now like to welcome to the committee Mr. Maher Mikhail, manager of Main Drug Mart. Mr. Mikhail and colleagues, please come forward. As you've seen the protocol, you have 10 minutes in which to make your presentation, which begins now.

Mr. Maher Mikhail: Honourable members of the social committee—Chair, Vice-Chair and committee members—good morning. My name is Maher Mikhail. I am accompanied by Mr. Gendi, the executive director of Main Drug Mart Group in Toronto.

I am an independent Ontario pharmacist, a Toronto community pharmacy owner, and the executive vice-president of the Main Drug Mart Group, which represents 60 stores in the GTA. I would like to begin by elaborating a little bit on the pharmacy profession.

I love my job and I enjoy every minute of my professional career. My profession is unique: I'm a professional and an entrepreneur as well.

Pharmacy has dramatically changed over the past 25 years, from the 1980s, the time when we were expected to decipher physicians' writing, type labels, count pills, and manually write insurance and ODB claim forms.

These days, more is expected from pharmacists. We keep up with the latest developments and updates in the pharmaceutical and medical fields through continuing education. We guide patients and lead them to learn better control over their health. We educate patients on how to use their medication and devices for a better quality of life and control over their health issues.

Pharmacists are one of the most publicly trusted professions in the world. In an optimal situation, a pharmacist detects, predicts and prevents problems with patients' medications and therapies before they happen. Phar-

macists intervene on their patients' behalf. They are the link between the patient and their physician.

Pharmacists are at the very front line of the health care system. Patients come to us when their doctors are not available or accessible. They come to ask for our advice instead of going to walk-in clinics or emergency rooms.

Patients know that we are always available and accessible. We don't have secretaries to take phone calls or screen phone calls. We don't hide from intruders in back rooms. Because our position is front and centre, pharmacists are more exposed to all kinds of dangers, including drug addicts that come into the stores, shoplifting and sometimes scary hold-ups. No other profession in the health care system is as exposed to these kinds of dangers as pharmacists.

My pharmacy is open seven days a week. I keep the pharmacy open on weekends for the sake of the patients. However, as most pharmacies find, I don't recover my weekend opening expenses. As pharmacy manager, I have one day off, and during that day I'm still on call and in touch with work.

As a health care professional, I feel it's my duty to stock my pharmacy shelves with all kinds of medication so that patient treatment is not compromised by lack of supply. I use my operating line of credit and pay bank interest to stock up on expensive medications for serious illnesses like HIV, cancer and MS so that I may dispense the medication immediately to customers in need of these medications. I buy shelf-stock-size medication, sometimes a 100-tablet bottle to dispense a 14-tablet prescription. I may be lucky and consume it all before it expires. Some expired medications might be credited by manufacturers for part of the purchase price. The non-returnable ones cost me even more money to destroy through the biohazard waste system.

Bill 102, thankfully and finally, recognizes my professional services other than dispensing prescriptions and will reimburse me for those cognitive services that were never recognized before.

Sixteen years ago, the Ministry of Health was paying a dispensing fee that's almost the same as it is today: \$6.54 per prescription. It seems that everyone is getting a raise—everyone, that is, except the pharmacists of Ontario.

The Ministry of Health demanded that my claims be submitted electronically, but I had to buy the equipment and upgrade to keep up with the sophisticated equipment of the government's offices, and I was still getting a \$6.54 fee. I invest time in senior citizens' homes, educating them about medical conditions that concern most of them, like osteoporosis, diabetes and hypertension, and I am still getting \$6.54 per prescription. I have a free delivery system to deliver medications to my senior citizen patients, those with critical illnesses and physically challenged patients, and my dispensing fee is still \$6.54.

Bill 102 is proposing to eliminate the actual source of income, the generic inventory allowance, now known as the "nefarious rebate," that we earned from the generic

manufacturers for the past 16 years. It was what kept pharmacists going, improving and advancing our profession to serve the public and to close the growing gap between what ODB has been willing to pay and the actual cost of providing services.

An example of this gap is the attached list of 13 pages of generic and brand name medications, in alphabetical order, which was supplied to us by the provider of the dispensary system computer software, ProPharm, showing the formulary ODB prices and the actual acquisition cost based on the wholesaler price list. Please review.

0930

Bill 102 is proposing to increase the dispensing fee after 16 years by 46 cents to \$7, which is well below the actual cost of filling prescriptions.

Bill 102 was formulated without proper consultation with our OPA. As a result, it proposed first to decrease our markup from 10% to 8%, with a \$25 cap. Thankfully, the ministry realized, and announced yesterday morning, May 29, that the \$25 cap is not realistic. In light of that, please fix the rest of the bill.

The viability of my pharmacy is in jeopardy with all those proposals in Bill 102. I may have to take dramatic steps backward: reduce/eliminate my services, reduce hours of operation, reduce my staff and charge extra for non-ODB services—that is, if I manage to stay open.

Pharmacists are only expecting to be compensated fairly in a democratic and free society as dedicated health care professionals and Canadian entrepreneurs.

I'm here today because of our great country's democratic political process that allows me to express my concerns as a Canadian citizen. I am also confident that through the same true democratic political process, this bill can and should be amended to be fair and efficient.

Finally, I would like to emphasize the acceptability of inventory allowance in any and all kinds of businesses and trades, and to emphasize the fact that there is no business anywhere in the world that doesn't allow or keep reasonable margins in order to survive.

Please, honourable members, protect your health care system. Our aging society relies on it. Help our Ontario pharmacists to stay loyal to Canada and Ontario. We don't want to lose our pharmacists to the south, where, in light of what's happening now, it seems more appealing.

Thank you very much for listening.

The Chair: Thank you, Mr. Mikhail. We'll begin with the NDP.

Ms. Martel: Thank you very much for your presentation.

Can I look at your 13 pages, so I'll be clear how this works? Can we just deal with the first one, Aldomet? The ODB price: \$15.89 per 100 capsules or pills.

Mr. Mikhail: Yes.

Ms. Martel: And the wholesale price: \$20.41?

Mr. Mikhail: Yes.

Ms. Martel: So this would reflect a loss essentially through the whole piece. Am I correct?

Mr. Mikhail: That is correct. This is what we have been getting and this is the price difference. Manu-

facturers submit increased prices to the government. The government doesn't allow it, the ODB doesn't allow it, but the manufacturers go ahead and increase the price anyway, and it's up to us to dispense the medication at a loss or not. We request acquisition costs from the government.

The Chair: Thank you, Ms. Martel, with apologies. I'll have to offer it to the government side now, Mr. Peterson.

Mr. Peterson: Basically, what eroded your 8% mark-up was the fact of the manufacturer increasing prices and the government not being able to stop it. Is that correct?

Mr. Mikhail: That's correct.

Mr. Peterson: Our only alternative in past legislation was to delist the product because of the way the legislation was written.

Mr. Mikhail: Delisting products is not really a very healthy idea.

Mr. Peterson: That's why we could not eliminate it. The only way we could stop price increases was to eliminate the product. You can imagine the uproar we'd have with patients if we started eliminating the products they've been on. Under the new legislation, we are planning on restoring that 8% markup, and with negotiations through the council for the evaluation of drugs and working with the pharmacy council, ensuring that the 8% becomes a guaranteed markup to you, an improvement of your markup. Do you think pharmacists will trust us to do that?

Mr. Mikhail: If they stay open, if they are still operating a pharmacy, they may trust you to do that, but what we are seeing are a lot of closures coming up, a lot of changes.

The Chair: Thank you, Mr. Peterson and Mr. Mikhail. To the PC side.

Mrs. Witmer: Thank you very much for your presentation. I guess the government's been so successful in sowing the seeds of confusion that you've stated here, "Bill 102 ... is recognizing my professional services"—the cognitive services. I noticed that the OPA says the bill brings pharmacists recognition of their skills. The reality is, folks, there is nothing in Bill 102 that is going to compensate pharmacists for cognitive services.

Mr. John O'Toole (Durham): It's not in the bill.

Mrs. Witmer: It's not in the bill. I think people need to remember that this is simply a promise. There have been so many broken promises on the part of the government. They've taken away the rebates through the professional allowances, but there's no guarantee you're going to get any additional money.

Mr. Mikhail: It's not clear in the bill, and we are waiting—

Mrs. Witmer: It's not there. They've done a good job; even OPA says they're being recognized. Well, not in the bill.

The Chair: Thank you, Mr. Mikhail. Your time has now expired. Thank you as well for your written material.

NOVOPHARM LTD.

The Chair: I'd now like to welcome, on behalf of the committee, Mr. Allan Oberman, president and chief executive officer of Novopharm, and colleagues. I invite you, as you speak, to please introduce yourselves for the purposes of the permanent record, Hansard. I invite you to now begin.

Mr. Allan Oberman: Good morning. My name is Allan Oberman, and I'm the president and CEO of Novopharm Ltd. I'd like to introduce two of my colleagues who are with me today: Terry Creighton is vice-president of government relations, and David Windross is vice-president of external affairs. David also happens to be a pharmacist.

I want to thank the members of the committee for the opportunity to present to you and to respond to the policy issues of Bill 102.

Novopharm is Canada's oldest generic pharmaceutical company, founded by Dr. Leslie Dan in 1965. Our vision is to be Canada's leader in affordable health care solutions. We employ approximately 1,500 people in highly skilled, well-paid scientific positions, most of which are located here in Ontario. We research and develop many new generic products per year, while currently manufacturing over 220 generic medications in over 700 dosage forms.

The medications that we make are generic versions of brand products once the brand's 20-year patent expires. They are equivalent to the brand product in every way in terms of purity, quality, effectiveness and safety. In fact, we make significant investments in clinical studies to prove to Health Canada that the product is equivalent. The only difference is price. Generic medications are priced much lower than the brands, due to extensive generic competition and government pricing regulations.

In the year 2000, Teva Pharmaceutical Industries, a publicly traded, Israeli-based company, acquired Novopharm. This merger made Teva one of the 20 largest global pharmaceutical companies and the largest generic manufacturer in the world. Teva believed, at the time, that Canada was a good place to do business. They had faith in our highly skilled employees and our affordable cost structure. They chose Canada because the regulatory environment was generally supportive of the generic drug industry and we had excellent proximity and access to the US market.

Since becoming a part of Teva, we have invested hundreds of millions of dollars in research and development and capital expansion. We have increased our manufacturing output by over 400% and made significant investments in new buildings, laboratories, equipment and technology, and in our people. We've become a major exporter of pharmaceuticals to the United States and are now starting to export to Europe. In the last three years, we have added over 700 highly skilled, well-paid jobs in research, engineering, production and management.

You know, Canadian manufacturers are often maligned for not making the investments in capital and innovation that will increase their profitability and scale

to effectively compete on a global basis. The investments that Novopharm and Teva have made in Ontario over the last three years have lead us to the point where we can say that we operate one of the largest and most efficient pharmaceutical manufacturing companies in Canada.

A healthy domestic generic industry is very important because we develop and produce essential medications for Ontario's residents at the lowest possible cost. Over the last few years, Ontario has become a global centre of development and production for the generic drug industry. We now rival the brand industry in terms of employment, with over 7,500 employees in Ontario, and we far exceed the brand industry in terms of production levels and new product introductions and in the volume of pharmaceutical exports.

The policy changes in Bill 102 will have a significant impact on Novopharm and the entire Ontario generic drug sector. We understand that the government has attempted to find a fair and balanced way to reduce the costs of the ODB program and to introduce transparency. The government has recognized that generics are a way to provide the best possible pharmaceutical care at the lowest possible cost.

We generally support the intent of the bill, but there are a few key areas where we have concerns. Some of these concerns will be better addressed by the CGPA, the association representing the generic manufacturers, which is scheduled to be in front of you next Monday.

0940

Today, Novopharm would like to point out two fundamental concerns. First, unilateral price reductions of generic pharmaceuticals, and second, off-formulary interchangeability.

The Minister of Health has announced that Bill 102 will lead to savings of over \$269 million for the ODB through a variety of measures. One of those measures is to reduce the price of generic medications to 50% of the brand price. This represents a price decrease of between 21% and 29% depending on the generic medicine. At the same time, over the last 13 years our industry has essentially lived under a price freeze where increases have not been permitted while costs such as wages, electricity, fuel and property taxes, to name a few, have risen dramatically.

Furthermore, Canadian generic prices are already fair and reasonable when compared to other countries. Last year, Professor Joe D'Cruz of the Rotman school of business at the University of Toronto released his study which clearly and unequivocally demonstrated that Canadian generic prices are on par with the United States. This was the most comprehensive study ever completed on thousands of generic medications. The price reduction proposed by the Ontario government will make generic medicines in Ontario much less expensive than anywhere in the world, thereby threatening the continued viability of the generic manufacturing base.

The Ontario Ministry of Health is a participant in the national pharmaceuticals strategy, which has directed the PMPRB to conduct an international pricing study of

generic medications. We question why the Minister of Health has unilaterally decided to reduce generic prices without waiting for the results of the study. The unilateral reduction is not based on any proper jurisdictional comparison. Why has he not chosen 55% or 60% or another figure?

Currently, the ODB has a graduated, two-step pricing model for generic medications. When a new generic is introduced in Ontario it is priced at 70% of the brand. The generic price falls to 63% of the brand for the second and subsequent generic entrants.

In this way, the government has provided an incentive to the generic manufacturer who invests in research and development to bring a new product to market quickly for the benefit of all Ontarians. This approach enables the government to benefit from competition between generic manufacturers and pay even lower prices when more than one generic is available. We believe this model makes sense.

The Premier himself has taken on the role of the Minister of Innovation and Development because he recognizes the importance of innovation in the life sciences. When the MARS complex opened across the street last fall, Premier McGuinty said in his remarks, "If we want a culture of innovation, we need to support the risk-takers."

The government has proposed eliminating this two-step pricing policy for generics and replacing it with a flat percentage of the brand price. This will affect the speed at which generics are developed and brought to market because there will no longer be any incentive to be first to market. There will no longer be an advantage to make the investments to speed the introduction of new products. The government will end up paying higher prices for brand products even after their patents expire, because the proposed generic policy will result in there being fewer generic alternatives.

In many other jurisdictions around the world the investment in R&D and innovation is rewarded. On average, generic manufacturers spend 15% of their sales on research and development. Innovation should be rewarded by allowing a higher price for the manufacturer that is first to market. As a comparison, the United States government rewards the development of a first-to-market generic by allowing a 180-day exclusivity period at a higher price for that generic. It's good public policy to have a two-step pricing model for generics.

We encourage the minister to leave the current system of first generics at an initial price of 70% of brand to ensure future generic investments and innovation. As we look to the future, the products that will be coming off patent over the next 10 years will be extremely expensive to develop and we may not be able to produce generic versions at a flat 50% of the brand price while still recouping our costs.

We would recommend that the government retain a pricing model that supports innovation and research and development of generic products.

I ask the committee to direct the Ministry of Health to ensure that the new pricing model for generics continues

to encourage innovation and reward risk-taking. As taxpayers and as patients, we all benefit from a healthy generic pharmaceutical industry.

Our second key message to this committee is not to be taken in by the erroneous claims of the brand companies relative to off-formulary interchangeability. OFI, as it is known, will simply allow pharmacists to substitute generic versions of brand products that have long passed the period of patent protection but simply aren't listed on the formulary. OFI will therefore allow private drug plans and cash payers to take advantage of lower generic pricing. Most of the generic medications subject to OFI have been in the marketplace for many years. The government is merely acting to eliminate a bureaucratic problem that was never the intention of the legislation when it was initially written.

Finally, private payers will be able to take advantage of lower-priced generic medications that have been available for many years, and pharmacists will be able to use their professional judgement to substitute these medications without having to bother the physicians, who are already overworked.

In summary, Bill 102 is an important blueprint for the entire drug system, and it is essential that the government consider all the various components of that system. We believe that a drug plan that offers the best access to generic medications at fair prices compared to the rest of the world and encourages innovation and research will ensure an affordable and sustainable program for the citizens of Ontario. Thank you.

The Chair: Thank you, Mr. Oberman, for your deposition and written material submitted on behalf of Novopharm.

DONNIE EDWARDS

The Chair: I would now invite our next presenter to come forward: Mr. Donnie Edwards. Mr. Edwards, as you've seen the protocol, you have 10 minutes in which to make your presentation, which begin now.

Mr. Donnie Edwards: Thank you, Mr. Chairman, committee members and guests for allowing me the opportunity to present my expert commentary on Bill 102. My name is Donnie Edwards. I am the pharmacist manager at Boggio IDA Pharmacy, a busy, innovative, independent pharmacy in Port Colborne. I have been in practice for 18 years. We have a staff of 35 employees, including six pharmacists and eight technicians.

Port Colborne is a community of approximately 25,000 people with three community pharmacies, 10 family physicians and a 60-bed general hospital with 25,000 emergency visits per year offering a complex continuity of care. Unfortunately, there are a large number of citizens without a family doctor, and those who have a family doctor are waiting a minimum four weeks for a visit. Our small, busy emergency room has a typical four- to six-hour wait. As a result, the pharmacist's role has become one of providing vital triage health care, as you will see by the examples I will provide shortly.

Boggio Pharmacy is known as a pharmacy offering great patient services with the community interest at heart. I reiterate the key words "patient services" and not "customer services." Every individual who enters the pharmacy is just that: our patient. Our motto is, "Be patient with the patient." Therefore, community members have come to depend upon Boggio Pharmacy, firstly for trusted information and advice on all health-related topics, and secondly for safe dispensing of medications.

This trend is strongly revealed in the following research statistics. In a Leger Marketing survey completed earlier this month, 98% of the 1,000 Ontarians interviewed said they trust their pharmacist to give them helpful and accurate information—98% trust their pharmacist. In addition, 88% said they trust their pharmacist to have an open discussion about their health-related questions, whether or not they are medication-related. Therefore, to emphasize how important our currently unpaid cognitive services are and how these depend upon professional allowances, I would like to prove to you the importance of 10 minutes to my patients.

Presenting today in 10 minutes on Bill 102 may not seem long enough for some. However, 10 minutes to a patient seeking advice from their pharmacist on their medication and chronic disease or illness could mean improved quality of life or could even save their lives.

The current government mandate is to increase access and decrease wait times for all Ontarians to health services. Bill 102 will jeopardize both of these if the financial viability of pharmacy is not maintained. To illustrate, with physician shortages, the pharmacists' role as triage personnel has increased dramatically. Brett, a 39-year-old male, woke up with tightness in his chest, nausea and a drained feeling. His physician's office said he could have an appointment in six weeks. In despair, he presented at the pharmacy for advice. After asking a few questions, I recognized his need to be assessed immediately, as he had many signs and symptoms of a possible myocardial infarction. I had known Brett for many years and I realized when he came in that he just didn't look right. Something was wrong, so I called 911. A week later, Brett and his spouse came in to get a number of prescriptions filled and to thank me for recognizing the signs of a heart attack that could have saved his life.

1950

Likewise, numerous times distraught parents have entered the pharmacy with pills in hand found in their teenage child's dresser, asking if I could identify them. Frequently, these are innocent occurrences and I calm the parents down. However, some incidents have revealed drug addictions that require links to be made to the appropriate resources and caregivers. I am able to respond to these issues in a much more timely manner than many other health care providers.

Similarly, a physician called from the emergency room asking for a patient's medical profile. It seemed this individual lived alone and was found unconscious. Without my immediate medication profiling, this individual's life would be in jeopardy.

An adult male visiting his parent from British Columbia realized his father's memory and cognitive capabilities are declining and asked for my help organizing his medications. I arranged for dosette packaging of medications that go along with a weekly visit from a pharmacy employee to check on the health and welfare of this individual. This individual can therefore live independently for a longer period of time at a lower cost to government resources.

An elderly woman collapses in the pharmacy waiting area. By the time the ambulance arrives, one of my pharmacists has already printed a medication list and has informed the attendant that the woman had been fasting for a religious holiday and was experiencing hypoglycemia, a drop in blood sugar levels.

A local ophthalmologist called me at home late at night one weekend with an emergency. A young boy was hit in the eye with a dart and he required specialized eye drops for the surgical removal of the dart. Despite the late hour, I went to the hospital to use the sterile fume hood and prepared eye drops to help save the child's eye.

Each of these scenarios has a commonality. The pharmacist gave a minimum of 10 minutes of his or her time, without remuneration, providing a positive outcome to each patient. This time could not have been given without professional allowances, as staffing in pharmacies would be drastically cut and consequently patient consultation times would equally suffer. As I'm sure you are aware, these are patient situations which happen in every community pharmacy in every city and town in Ontario. Why? Because pharmacists are accessible and trusted. If changes in Bill 102 are made that impact on the long-term sustainability of pharmacy, these principles could be compromised.

In my profession, allowances from generic companies are invested in many different ways to enhance patient care. An elimination of these allowances would limit my ability to enhance patient services. Some of the services I offer to my community include clinic days focusing on medical conditions such as diabetes, osteoporosis, cardiovascular care and asthma, and flu shot clinics. Concordantly, at a recent cardiovascular risk-assessment day held in the pharmacy, patients booked 45-minute appointments where a nurse would conduct a blood screening of lipid levels, cholesterol, triglycerides and sugars as well as blood pressure and weight. Next, they were able to visit with a dietitian for 15 minutes to talk about their diet. Then they spoke to a pharmacist regarding their medication profile and how to manage their risks. Our pharmacist wrote a synopsis to each person's family physician and called the patient, re-emphasizing the key outcomes.

Due to physician shortages, this time allotment is not possible through a physician; however, professional allowances provide an opportunity for these events to occur in a community pharmacy. Consequently, these allowances also permit pharmacists to speak on various health topics in their own communities, whether to church groups, the United Way, city council, physicians

or schools. I received a call from a school principal who had a student with a ketamine overdose, called "special K" on the streets. I was asked if I could speak to staff and students on the dangers of drug abuse. After researching the topic, I realized that a presentation to students from grades 7 to 12 would be a great education component in which pharmacists, being drug experts, could speak at schools in their communities. I partnered with a pharmaceutical company and the Ontario Pharmacists' Association to develop a high-impact presentation which I have personally delivered to thousands of students at many schools. Without professional allowances, these student talks could not occur. I could not afford to do them.

Therefore, in the best interests of Ontario patients, it is important not to impose a limit on investment of professional allowances. What would be acceptable is the creation of a transparent and enforceable code of conduct between the generic manufacturers and the Ontario Pharmacists' Association. OPA is recommending this in their approach.

On another note, as the DSS has heard and as is common knowledge in the pharmacy world, the cost of dispensing a prescription is much greater than the \$7 being offered.

In my other life, I am the chair of the Ontario Pharmacists' Association, the recognized voice of pharmacists in Ontario. OPA presents an amendment that recognizes its role in policy and implementation of policies for the profession. Augmentation to our dispensing fee will be part of that.

As a most accessible, trusted health care provider, most of my day is spent listening to patients' health concerns and questions, and in turn, providing them with precise and accurate information, ensuring their safety and positive health outcomes. I do this because they are my patients.

Pharmacists are generally compassionate and empathetic individuals. Whether it is answering calls late at night or providing information out in the community, practising pharmacy in a small town where family and friends live is a 24-hour job. Pharmacists are a vital part of every community.

As a passionate pharmacist committed to my profession and my patients, I encourage the government to listen carefully to all concerned parties to ensure a health care system that is not just sustainable but innovative and caring. Thank you very much.

The Chair: Thank you, Mr. Edwards, and I congratulate you on your precision timing.

CLARK'S PHARMASAVE

The Chair: On behalf of the committee, I would now invite our next presenters, Greg Smith and Steve Flexman, owners of Clark's Health Centre Pharmasave. Please come forward. As you've seen the protocol, you have 10 minutes in which to make your presentation. I would just once again inform members of the audience

and all interested parties that there is overflow seating, closed-circuit television, ringside big viewing available in the room next door. Your 10 minutes begin now, gentlemen.

Mr. Steve Flexman: Good morning. My name is Steve Flexman, and with me is Greg Smith. We are both pharmacists and co-owners of Clark's Pharmasave in Simcoe. I'd like to thank the committee for giving us the opportunity to speak with you today with respect to the proposed changes offered in Bill 102.

We own and operate two independent pharmacies under the banner Pharmasave that service Simcoe and the surrounding rural areas of Haldimand-Norfolk. We also provide home infusion services through our contracts with CCACs—community care access centres—for Haldimand-Norfolk and Oxford counties.

We employ close to 70 full-time and part-time people between our two stores. This includes six pharmacists, five nurses and 12 pharmacy technicians. Our locations are both open seven days a week and holidays, and we have a pharmacist and nurse on call 24 hours a day to service our clients. Our customers find us very accessible and always willing to help in any way we can.

Greg and I met at pharmacy school at the University of Toronto just over 10 years ago. We became close friends and dreamed of one day becoming business partners and owning our own pharmacy. In February of this year, four months ago, the dream became a reality and we purchased our two stores from the previous owner, Harley Clark. At the time of the purchase there was much back-and-forth between lawyers and accountants until we all agreed on a reasonable purchase agreement. This price was based on current market practises.

Being new owners for just the past four months, we've been faced with a number of challenges, but none as great as the one posed by the impact of Bill 102 on the financial aspect of our business. In order to purchase the pharmacies, Greg and I have had to take out a substantial loan from the bank, and have commitments to pay back that loan, as well as payments to the previous owner over the next several years. With the proposed changes, the economic environment for pharmacy going forward will be substantially different from the circumstances under which we made the deal to purchase the stores.

That being said, our analysis of the proposed legislation will make it very difficult to meet our financial commitments to the bank unless we make some changes to our operations that unfortunately will affect the level of service we can provide to our patients. We estimate that between our two stores, if the bill is implemented as it currently reads, we will incur a loss of close to half a million dollars in gross revenue annually. This revenue allows us to staff our pharmacies at a level that provides the best possible patient care. This revenue allows us to reinvest in technology and training to provide the highest quality of care to our clients.

Yesterday's announcement to rescind the \$25 cap on prescription drug markups is welcomed. This should cut our losses by \$100,000, but still taking away \$400,000 in

revenue on an annual basis will require some drastic adjustments in how we operate our business.

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At Clark's Pharmasave we have made a firm commitment to provide above-and-beyond customer service, and our customers have come to expect this type of service level. We've previously won a commitment to patient care award, a Pharmasave outstanding service award, and we're the second pharmacy in Canada to become ISO 9001:2000 registered. To date, there are only five pharmacies like that in the world. I provide these as examples of our dedication to customer service excellence, not to mention the many local charities and organizations we support.

Some of the services we provide include one-on-one consultations, clinic days, community seminars, blister packaging, free delivery, consultation on home infusion medications and specialty compounding. These services and more are made possible through our arrangements with our generic drug manufacturing partners that allow us to have pharmacist staff available to provide these services. On most days, we have two pharmacists available to provide one-on-one consultation, diabetic meter training, or to simply sit down with a patient and ensure they know how to take their medications properly or solve their drug-related problems.

It's not uncommon for the overburdened physicians in our area to send newly diagnosed diabetic patients to us for instruction on how to inject insulin, lifestyle changes, diet recommendations or meter training. Oftentimes, hospital-discharged patients who, for example, recently had a heart attack will talk to one of our pharmacists about the five to six new medications they've just been prescribed. We'll sit down with them for up to an hour.

We enjoy providing these services and helping our patients. It's what makes being a pharmacist great, but providing them takes time and costs money. We expect that if the bill goes through, we'll have to eliminate this overlap in pharmacist time, which will reduce our ability to provide these services and increase the waiting times for patients to have their prescriptions filled.

We commend the government for recognizing pharmacists as health care professionals and being willing to pay us for cognitive services. However, we need more clarity on what will be paid for, the process for reimbursement and the professional fees that will be allowed. At present, this uncertainty, and the fact that the dollar amount available for cognitive services will not come close to offsetting revenue lost through promotional allowances, has hindered our ability to make investments in the business that will continue to enhance patient care. We ask that you take a hard look at the costs involved in running a pharmacy to ensure that the changes you make allow independent pharmacies to remain sustainable.

I applaud the government for yesterday's announcement to remove the \$25 cap on the prescription drug markup. This would have been a crucial blow to the provision of home care pharmacy and catastrophic to our

patients who are afflicted with such conditions as Alzheimer's, arthritis, cancer and multiple sclerosis, just to name a few.

In closing, I'd like to thank you again for the opportunity to speak here today. I hope we provided some input that will be considered as this legislation moves forward. The sustainability of community pharmacy is at risk, the service to patients is at risk and the jobs of a number of our employees may be at risk if these concerns raised are not addressed. Thank you.

The Chair: Thank you very much. We'll begin with the Liberal side, Mr. Fonseca.

Mr. Peter Fonseca (Mississauga East): Greg, Steve, thank you very much. It's wonderful that you got that ISO designation. You were saying that only five pharmacies around the world have received that. I'm sure that will bring a lot more quality service to the patients you serve and your customers.

You brought forward many of the things that you do in the community. As you know, in section 8 of this bill we are looking at paying for those cognitive services that have not been addressed in the past and making sure that we take into account the value that the pharmacist provides to the community, outside of just dispensing the pills, in terms of all the things you do around disease management etc. On that, what would be some of the top priority cognitive services that you would like to see reimbursed? You can use your community as an example.

Mr. Flexman: A basic one that all pharmacists can relate to, and how we're trained at the University of Toronto and all schools across Canada, is addressing medication reviews, medication consultations, where we'll sit down with a client and discuss their medicines one on one, looking for drug interactions, ways to cut down maybe on the number of meds they're taking. Sometimes they're missing a crucial medicine that they should be on. That's very key. That requires extensive pharmacist time, though, and the amount of money that's been pledged forward, \$50 million—

The Chair: Thank you very much, Mr. Flexman. We'll go to the PC side, Mr. O'Toole.

Mr. O'Toole: Congratulations. As a couple of young entrepreneurs, that's good. Good for you. But the assumptions you made, just picking up on what Mr. Fonseca was saying—one of the previous presenters recognized that there are two main things in here that are in conflict. One is this idea of the consult fee, recognizing your professional contribution to health care, primary care, and the \$50 million. The other one is the \$500 million they're going to pull out of it.

Interjection: At least.

Mr. O'Toole: That's the whole issue here. Your basic business plan has been premised on some sort of—this bill is about saving money. That's what it's about. I think it was Novopharm that said it's going to devastate pharmacy, and most of the coalition people are saying that. The OPA doesn't, though. They seem to think it's going to work out somehow; they'll make a deal with George. What's your sense on this? Isn't this the

committee that's supposed to listen to the input of you, the professionals, and make amendments or recommendations? What recommendation would you like us to put forward on your behalf, in the hopes that the government will not just extensively be trying to yank \$500 million out of the system, so that you can stay in business and provide the service you suggest?

Mr. Flexman: I think it needs to be written in the bill that there is room for promotional allowances still to exist for pharmacies so that we can continue on with looking for innovative ways to fund the business. I also think it's important that we do have the pharmacy council that's being talked about more clearly defined, what they're going to be able to do.

Mr. O'Toole: Then Novopharm won't be able to—

The Chair: Thank you, Mr. O'Toole. I have to offer it now to the NDP side.

Ms. Martel: Thank you, both of you, for being here today. I go to section 8, where it says the government is going to pay you something. All it says is that the executive officer will set payment amounts and disburse payments for professional services that pharmacy operators provide. It doesn't even include \$50 million. It certainly doesn't say how that's going to be done, and it certainly doesn't make up for the loss in promotional rebates that you've already talked about.

Can you tell me, is the \$400,000 loss that you talked about based on an 8% markup that's on the wholesale price or a different price, because that will change your bottom line as well. Of course, that's not defined properly in the legislation either and there's lots of confusion around what that 8% markup actually refers to. Can you enlighten the committee?

Mr. Flexman: That was one of the key questions we had, about the 8%. We pay a 6% wholesaler up-charge to get the drug in the first place, so 8% after wholesale is a big difference. Also, we expect about a \$400,000 loss in revenue coming from a \$600,000—initially, from rebates in the first place. So that's a humungous change in the revenue side of how we operate our business. It's devastating.

Ms. Martel: Thank you.

The Chair: Thanks to you, Mr. Smith and Mr. Flexman, for your deputation on behalf of Clark's Pharmasave.

ABBOTT

The Chair: I would now invite our presenters from Abbott pharmaceuticals: David Link, national manager of market access and government affairs, as well as Scott Oke, manager of provincial affairs. Gentlemen, if you've seen the protocol, your 10 minutes begins now.

Mr. Scott Oke: Thank you very much. My name is Scott Oke. I'm the Ontario manager of provincial affairs for Abbott Canada. Joining me today is David Link, who is our national manager of market access and government affairs. Let me start by thanking the committee for providing us with this opportunity to share our thoughts on Bill 102.

Abbott is a developer and manufacturer of brand name pharmaceutical products. In addition, we are a leader in the field of nutritional and medical products, including devices and diagnostics. Abbott employs over 1,200 people in the province of Ontario in five different divisions, with operations in Brockville, Kanata and Mississauga.

Abbott's point-of-care division in Kanata currently employs 800 highly trained staff who develop and manufacture medical diagnostic products for bedside blood analysis. The Abbott facility in Kanata is currently looking to increase their manufacturing capacity, which would require moving 100 production jobs from New Jersey into Ontario. This potential \$30-million capital investment would occur over an 18-month period.

On the brand name pharmaceutical side, we currently have over 700 patients in clinical trials in Ontario and have invested close to \$10 million in clinical research in the past three years.

I would like to begin by stating that there are parts of this bill that we believe are long overdue and we recognize the minister's work in bringing those changes forward. Specifically, I am talking about changes that would provide for more patient involvement, result in the potential for faster listing by eliminating the need for cabinet approval for drugs that receive a positive recommendation from the CED, and reduce paperwork for physicians and pharmacists through the elimination of section 8 and the return to its original intent for exceptional cases.

Unfortunately, there are also parts of Bill 102 that cause us great concern as researchers, as employers, and as individuals committed to improving the health outcomes of patients around the world.

I want to focus the committee's attention on the words Minister Smitherman spoke as he introduced Bill 102, because I think they are important to the work you are being asked to perform here today. According to the press release put out by the Ministry of Health that day, Minister Smitherman said, "All patients will continue to receive the drugs they currently receive."

I have no doubt that when people heard the minister's words, they breathed a sigh of relief and went back to their busy lives.

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The problem is that Bill 102 establishes no such guarantee; quite the opposite, in fact. Consider the following. The government is planning to cut almost \$300 million out of the seniors' drug budget this year and \$600 million from patented medicine reimbursement over the next two and half years. Then look at the principles of Bill 102. When you do so, you will notice that three of the five principles speak only to money, while none of them speak to improving patient outcomes.

Viewed in this context, we have grave concerns over how brand pricing agreements and the new interchangeability clauses will be implemented. We've heard what the minister has said about therapeutic substitution; we just want the bill to say the same thing.

Without major amendments, we believe that the fears of forced switching and therapeutic substitutions at some time in the future are absolutely justifiable. That is why we are asking you to amend Bill 102 now.

Specifically, and at a minimum, we would like Bill 102 amended so that current ODB recipients are grandfathered. By grandfathering we mean that patients who are currently well controlled on their existing branded medication would not be forced to switch and fail on a less expensive, non-interchangeable medicine before being returned to their original medication. These treatment failures add significant costs to the health care system, effectively eliminating any perceived savings. Just as the minister promised, a grandfathering amendment would ensure that under no circumstances would a senior be forced to switch to a non-interchangeable medicine.

Let me quickly explain why we believe Ontarians should be concerned about the forced switching of non-interchangeable medication based on price alone. By definition, unless they are truly bio-equivalent generic products as established by proper evidence-based comparative analysis, no two drugs are the same. Different drugs behave differently in the body. Moreover, the same drugs can behave differently in different bodies. To optimize safety and effectiveness, physicians need access to a full complement of therapies in order to choose the right ones that will work best for their patients.

Proof of this is easy to find. When a similar cost-cutting measure which forced patients to switch medicines happened recently in British Columbia, the BC government's own numbers showed that 25% of those patients experienced a treatment failure. That is, those individuals, mostly seniors, had to return to their doctors' offices and emergency rooms because the cheaper medication the government forced them to switch to simply did not work for them. Instead of saving the government money, these changes simply shifted costs from the drug benefit plan to hospitals, physician reimbursement and out-of-pocket fees paid by the patients themselves.

I would now like to spend my last few minutes talking about the value of medicines and concerns we have about the view that many in government seem to have about rising drug costs. Again, allow me to give you some context.

Mr. Smitherman has worked hard and is to be congratulated for his efforts to transform the Ministry of Health from an organization with several hundred silos to an integrated system. Unfortunately, the same is not true of the drug budget. Instead of looking at the system-wide financial benefits of investing in innovative medicines, the ministry instead looks only at the cost curve of the ODB and the total amount spent purchasing medicines. In this new age of integration, why doesn't the Ministry of Health acknowledge that money invested in medicine dramatically reduces hospital stays, surgeries performed, doctor visits and the costs of nursing care in our long-term-care centres?

Make no mistake: Investments in new medicines actually save money—lots of money. According to a 2002 study by Professor Frank Lichtenberg of Columbia University, new medicines reduce other costs in the health care system by a factor of seven to one. That is, for every dollar spent on drugs, seven dollars are saved elsewhere in the health care system.

Innovative medicines help avoid more invasive procedures. They reduce or prevent hospital stays, reduce wait times and keep people with chronic illnesses healthier.

As one of the world's leading manufacturers and researchers of AIDS medication, Abbott is proud that its work has helped result in a 70% drop in the mortality rates and a corresponding 71% reduction in the hospital stays from this disease alone.

The same is true of research and innovation, two pillars upon which the Premier wishes to build Ontario's future economy—so much so that he took on personal responsibility for the portfolio as Ontario's first minister in this role.

The numbers are clear. Everyone in Ontario gains from brand name pharmaceuticals' ongoing commitment to develop new medicines and vaccines.

The research-based pharmaceutical community employs about 9,000 men and women in Ontario, creates an additional 24,000 spinoff jobs and injects \$2 billion annually into the province's economy. Last year alone, we invested over \$350 million in research and development, of which more than \$40 million went directly to universities and hospitals here in Ontario.

Rx&D has made it clear to the ministers of health, research and innovation, and economic development and trade that we believe Bill 102 undermines our future ability to invest in research and development in Ontario, from plant and equipment to clinical trials which serve 40,000 Ontario patients. Investment activity is a global endeavour, and Ontario will be substantially less attractive for these activities. Over time, these funds will move away from Ontario to other provinces and other countries that support innovative industries.

With that, I would like to once again thank the committee for this opportunity to express Abbott's thoughts and concerns. I hope this presentation helped to convince you that Bill 102 should not pass without major amendment. We would strongly urge you to adopt amendments which prevent therapeutic substitution, eliminate brand pricing agreements and grandfather those patients already stabilized on their current medicines.

We would be happy to answer your questions now.

The Chair: Thank you, Mr. Oke. There are about 30 seconds per side. Ms. Witmer.

Mrs. Witmer: Do you not think that Ontario should get discounts because it's a large purchaser?

Mr. David Link: Can I answer that question? Thank you. That's a good question. As you know, Ontario already is getting best pricing. The brand name pharmaceutical companies have a number of hurdles to get through before a final price point is delivered. First of all,

we go through the Patented Medicines Prices Review Board, which makes sure that our prices are consistent and fair from an international perspective. Most of the people in this room will know that our current prices are 9% lower than international median prices and significantly lower than what's happening in the United States, so much so, as you know, that cross-border trade—

The Chair: With apologies, I will have to intervene. Ms. Martel.

Ms. Martel: Have you had any indication from the government about the framework for the negotiation of drug products and pricing?

Mr. Link: No. We've been given some sense that this is modelled after the Department of Veterans Affairs. All we know is that the context of those negotiations will be based on price and that if you're not able to effectively negotiate a price with the government, you will likely be delisted, which would force patients off that therapy.

The Chair: Thank you, Ms. Martel. To the government side: Mr. Peterson.

Mr. Peterson: Thank you very much for your presentation. Under our legislation, if a doctor puts on the prescription "no substitution," there will be no substitution, so the efficacy of the medicine will be maintained.

Thank you for also tabling information about studies done concerning keeping patients out of hospitals by using drugs. When our committee consulted extensively with the industry, we found mainly anecdotal evidence; we didn't find hard enough evidence. Part of going forward is that we'd be able to solidify that medicine, because we are the government that has gone to patient focus, away from hospital focus. We appreciate and we'll look forward to working with you to establish better information on that level. Thank you very much for tabling your information on that. I look forward to reading it and working with you in the future.

Mr. Link: You're welcome.

The Chair: Thank you, Mr. Peterson, and thanks as well to you gentlemen, Mr. Oke and Mr. Link of Abbott pharmaceuticals, for your deputation and written submission.

TARO PHARMACEUTICALS INC.

The Chair: I invite our next presenter, Mr. Doug Robins, vice-president at Taro Pharmaceuticals. As you've seen, Mr. Robins, you have 10 minutes in which to make your presentation.

Mr. Cameron Jackson (Burlington): On a point of order, Mr. Chair: I would like to request information. Several deputants have referenced this American-based, United States Veterans Affairs model. There are three models that have been discussed. Could we ask research to prepare some background information for the committee?

The Chair: Mr. Jackson has raised a request for further written materials regarding the American-based models, as you've heard. I direct legislative research to comply with that.

Mr. O'Toole: It was mentioned yesterday in one of the presentations.

The Chair: Thank you, Mr. Robins, please begin.

Mr. Doug Robins: Good morning. My name is Doug Robins and I'm the vice-president of sales and marketing for Taro Pharmaceuticals, located on East Drive in Brampton, Ontario.

Taro Pharmaceuticals is a wholly owned subsidiary of Taro Pharmaceutical Industries, with corporate head offices located in the United States. Taro Canada is part of a bigger generic pharmaceutical industry of great value to Ontario, consisting of 13 companies located largely in the greater Toronto area. The Ontario generic drug industry employs over 7,500 Ontarians in well-paid, high-skilled jobs which include research, development and manufacturing.

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Since 1984, Taro Canada has been manufacturing, exporting and locally marketing generic pharmaceuticals sold by prescription and over the counter. These products are made in Canada, and sold in Canada, the United States and throughout the world. They are, for the most part, low-cost versions of the higher-priced brand name drugs and are sold after the brands' patents have expired.

We currently occupy in excess of 350,000 square feet in four buildings at our Brampton campus on East Drive. These buildings house manufacturing, our research and development laboratories, administration and warehousing. We employ 378 people in high-value, full-time positions, as well as an average of 32 contract and temporary personnel in a given week.

While we represent less than 2% of the total generic pharmaceutical sales in Ontario, we have a significant pharmaceutical export business from our Brampton plant. In 2005, we manufactured over 73 million tubes of semisolid pharmaceutical product, 93% of which was exported. For this manufacturing, we purchased over \$50 million in raw materials locally and our payroll was in excess of \$24 million.

Our products provide the same quality, purity, effectiveness and safety as the high-priced brand name drugs. They have been approved by Health Canada and meet the same strict regulations established by the Food and Drugs Act for generic and brand name drugs.

It is important to remember that the products we manufacture and export from Brampton are low-cost versions of branded pharmaceuticals, and this manufacturing takes place only after the patents on the brands have expired.

As well, our ingredients meet the same scientific norms and standards set by Health Canada for brand name products, with the same proven safety and efficacy. We also have a proven track record that our products' active ingredients are as pure, dissolve at the same rate and are absorbed in the same manner as the originator's product.

I thank you for allowing me the next few minutes to show support for Bill 102 and share with you the following observations.

Let me begin by saying that there is a place for both branded and generic pharmaceuticals in the Ontario, Canadian and international marketplaces. As governments try to cope with soaring drug costs, generics provide a logical solution. The branded industry seeks access for their new products, while governments have been reluctant to underwrite these due to high costs.

The lines of demarcation between brand and generic are indeed blurring. The branded industry now has a significant presence in the generic business. Novartis, the number four worldwide branded company, owns Sandoz, the number two worldwide generic company. As well, generic companies continue to invest heavily in basic research and biotechnology.

As a generic manufacturer, we see this bill as an opportunity to increase availability of low-cost generic drugs, thereby saving money not just for the government but also for private employers and consumers. The savings realized from generics could be used to purchase new branded products. We applaud these initiatives. We also applaud the Ontario government's efforts to bring greater transparency along with these cost savings to the operation of its drug benefit programs.

These cost savings will also be available for Ontarians not covered by the Ontario government's drug plan, i.e., those with private drug insurance through their employer and those unfortunate few who have no insurance at all. One calculation of an initiative in Bill 102—off-formulary interchangeability, or OFI—suggested savings for Ontario businesses and families of more than \$30 million in the first year alone. These savings are based on the difference in prices currently charged by brand name and generic companies for drugs affected by OFI.

Unlike virtually every other jurisdiction in North America, Ontario's current interchangeability rules deny access for employers and consumers to low-cost generic drugs—clearly not the original intention of legislation that governs the interchangeability of generic drugs. These rules also penalize Ontario seniors and social assistance recipients who need medication not covered by the government's drug plan.

The need and support for OFI has been expressed by every major employer that provided comment during consultations on the government's proposed changes. These stakeholders include the Employer Committee on Health Care in Ontario, or ECHCO, and Green Shield, a large private insurer which operates the drug benefit plans for the Big Three automakers as well as many other employers in Ontario.

It should be noted again that the products affected by OFI have already enjoyed the benefit of up to 20 years' exclusivity through patents. Those patents have now expired and it is time for Ontario—private employers and consumers—to benefit from lower prices generated by generic competition.

Taro Pharmaceuticals pledges to work with the government and our pharmacy and wholesaler partners to develop rules for generic reimbursement. We, like other manufacturers and stakeholders, would like to be included in discussions relating, but not limited to, a new

code of marketing conduct; the arbitrary pricing of generic products at 50% of brand; a mechanism for a phasing-in period of Bill 102 perhaps for new products on a go-forward basis; help the government achieve the goal of full transparency; and help all stakeholders ensure long-term viability and sustainability.

In conclusion, I want to reiterate our support for Bill 102. With continued consultation and dialogue such as this, followed by a balanced approach to implementation of the regulatory and policy aspects of the government's overall proposals, Bill 102 will be a success. Let me also add that, because of the profound impact Bill 102 will have on the rest of Canada, this dialogue and consultation should also include participants in the national pharmaceuticals strategy initiative.

I ask all members of the committee and all members of the Ontario Legislature to support the taxpayers of Ontario by supporting this important piece of legislation.

Thank you, and I'll be happy to answer any questions.

The Chair: Thank you, Mr. Robins. About 30 seconds or so per side, beginning with Ms. Martel of the NDP.

Ms. Martel: You focused on a concern, the arbitrary pricing of generic products at 50%, and you want to work with the government. In an earlier presentation from Novopharm, another generic company, they said, "We encourage the minister to leave the current system of first generics at an initial price of 70% of brand to ensure future investments in innovation." Would that be the position of your company as well?

Mr. Robins: Somewhere in that neighbourhood, yes.

Ms. Martel: So you have a similar concern and essentially want the two-step pricing model to remain in effect?

Mr. Robins: I would like to see the two-step pricing model remain in effect because it does encourage innovation.

Ms. Martel: Are the numbers similar then or do you have a different sense of—

Mr. Robins: Keep in mind that Taro's a very small manufacturer. We're also a niche player, so—

The Chair: With apologies, we go to the government side, Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): Mr. Robins, thank you very much for being here and for your support before, during and after.

Can you just talk to us a little bit about the relative investments in research and development of generic and brand? Can you give us some statistics around the percentage investments? Do you have those?

Mr. Robins: I can only speak for Taro, and that's proprietary information. I think probably the best people to ask would be the association, which I understand is going to present on Monday afternoon, if I'm not mistaken.

I spent 25 years in the branded pharmaceutical industry before I moved to the generic side and I can assure you now that as the lines blur, the investments in research in Canada by generics and branded are approaching each other.

The Chair: Mr. Jackson of the PCs.

Mr. Jackson: Mr. Robins, could you explain to me what the market forces are that cause you to provide rebates to pharmacists if they acquire your generic drugs?

Mr. Robins: When you're in a commodity market and you are one manufacturer along with five or six others that have the exact same product, the only way you can differentiate yourself is by price, and since that price is legislated by the government, then you have to find ways of compensating for that in the form of education allowances.

Mr. Jackson: If those are eliminated, how will that affect your ability to promote your generic drugs?

Mr. Robins: My understanding is that this bill will not completely eliminate them, that they will still allow educational grants, along with, in its current form, up to a 29% reduction in price. So our bottom line isn't going to be affected one way or the other. We'll have to differentiate ourselves by coming up with unique and novel educational pieces that the pharmacists can use in conjunction with dispensing our products.

The Chair: Thank you, Mr. Jackson, and thank you as well, Mr. Robins, for your deputation on behalf of Taro Pharmaceuticals.

COBALT PHARMACEUTICALS

The Chair: I would invite our next presenter, Mr. Terry Fretz, president of Cobalt Pharmaceuticals, and colleague, to introduce yourselves for the purposes of recording. Your 10 minutes begins now.

Mr. Terry Fretz: Thank you, Chair. I was advised yesterday that you folks were cloistered away on the hottest day of the year in a room, but somehow everyone's looking relatively robust this morning and I trust that the weather will be kind to you throughout the day.

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Mr. Peterson: It's because of good drugs.

Mr. Fretz: Absolutely, because of great generic pharmaceuticals.

My name is Terry Fretz and I am the president of Cobalt Pharmaceuticals. Cobalt is a full-service global developer and manufacturer of generic pharmaceutical products located in Mississauga, Ontario.

Cobalt is a member of the Arrow Group of companies, operating globally and focused primarily on generics, but with interests in branded prescription products and over-the-counter products.

Cobalt is pleased to have this opportunity this morning to provide its perspectives on Bill 102, the Transparent Drug System for Patients Act, as well as the accompanying range of pharmaceutical policy reforms that were announced on April 13, 2006.

At the outset, let me say that Cobalt Pharmaceuticals supports the aims of the bill and the key principles underlying those aims. We agree that there are opportunities in the Ontario drug system for the government to achieve better outcomes for the \$3.5 billion that it spends on pharmaceuticals and, at the same time, achieve better access to drugs for patients, promote the appropriate use

of drugs, and reward innovation. As well, Cobalt supports the government's plan to improve the governance, accountability and operations of the public drug system. In summary, Cobalt can do business under Bill 102, provided the government commits to a dialogue with the generic industry as regulations are developed.

At the same time, Cobalt recognizes and acknowledges the challenges that confront our retail pharmacy partners from several provisions of the bill. We will not speak in detail to the concerns that have been expressed from some elements of the Ontario retail pharmacy community. Certainly that's been ongoing for the past several weeks and yesterday and today and for the duration of these hearings. Many of those expressions are well known by all parties. What we can say is that it is vital that the government deals with the concerns of pharmacy in an appropriately fair and transparent manner, as our retail pharmacy partners come to grips with the new policies and compensation models that will eventually be established.

In particular, Cobalt would like to stress the importance of the government acting as expeditiously as possible to assist the retail pharmacy sector in transitioning from an outmoded compensation system to one in which pharmacists are compensated fairly, appropriately and transparently for the services they provide, whether they be core dispensing services, enhanced professional services or specialty services, some of which you've already heard articulated this morning from other presenters.

The government has already stated that it recognizes the value of pharmacists as front-line health care providers, a position which we wholeheartedly support. To do less than make that compensation truly reflective of their skills, expertise and time would be a disservice to the profession and to the interests of the patients the bill purports to serve.

At the same time, we acknowledge that the promotional investments made by the generic industry to pharmacists should be governed by a code of conduct that is developed in consultation with government and pharmacists. This code must provide fair and reasonable guidance to pharmacists and suppliers, and it must be transparent and enforceable on all parties. This code must be applicable to manufacturers, agents and brokers alike.

Cobalt would also like to offer some perspectives on the issues of innovation and research and development from our position as a Mississauga-based generic pharmaceutical organization.

Comments have been made recently by some observers that the effects of this bill will greatly harm the interests of the brand name drug sector, a number of whose members are located in Mississauga. As a generic manufacturer, Cobalt respects innovation in drug therapy. We, like our generic competitors, depend upon expired patents in order to research, develop and manufacture safe, high-quality, lower-cost bioequivalent pharmaceuticals for Canadians. What we simply ask is that government recognize us as an equally important component of the pharmaceutical industry and acknowledge the significant contribution that we make by helping to lower

health care costs and drive the economic development of the province of Ontario.

In Mississauga, we operate a state-of-the-art global manufacturing facility employing more than 250 people, 100 of whom are engaged in research and development. We have recently invested \$35 million in our plant and equipment, and in 2006, Cobalt will reinvest one third of its \$90 million in revenues into research and development. More than 50% of the product that we manufacture in Mississauga will be exported to other countries. That speaks to the nature of the employment and the kind of people we employ. These are high-paying, quality jobs. We're investing into the local economy, into the Ontario economy and into the Canadian economy.

It is therefore critical that the government take a fair and equitable approach in policies affecting the pharmaceutical sector, both brand and generic. If generic utilization approached US levels of, say, 50%, we submit that the estimated \$400 million to \$500 million that Canadians would save on drug expenditures could surely be more effectively utilized in improving access to new drugs and enabling public coverage of the often catastrophic costs associated with expensive drugs for rare diseases. Off-formulary interchangeability, or OFI, will save Ontario businesses and families more than \$30 million in the first year alone.

Cobalt believes that, on balance, Bill 102 achieves the objective of improving access to high-quality, cost-effective drug therapy for Ontario's 12 million citizens while respecting the government's mandate to make responsible decisions that ensure its public drug program will sustain Ontarians well into the future.

In conclusion, Cobalt Pharmaceuticals would like to again reiterate its support for the principles and aims of Bill 102, as they generally support a viable public drug system and a dynamic pharmaceutical market in Ontario.

I thank the committee for your time and attention.

The Chair: Thank you, Mr. Fretz. We have a minute per side, beginning with the government.

Mr. Peterson: Thank you for your presentation and thank you for your positive support of innovation and technology and the development of industry in Canada.

One of the issues that's been confronting the government is, first, to get a handle on the size of the rebates and try to find a better way to use those to further the drug industry and further patient care. We're talking about a code of conduct. Do you have any suggestions for us in this area?

Mr. Fretz: The dialogue needs to engage all parties—obviously the payer, the government, the manufacturers who ultimately provide those professional fees back to our pharmacy partners or the community, as well as the pharmacists. One of the things I'd like to stress is that the dollars are frequently referred to as simply a rebate, and that just implies money on the table. What you heard this morning from one of the presenters were the kind of services that community pharmacy provides back to its community, back to its stakeholders, and I think it's very important to be cognizant of that.

What we grapple with is to find a balance where all parties can continue to commit to their stakeholders and—

The Chair: With apologies, Mr. Fretz, we'll move now to the PC side.

Mr. Jackson: I'd just continue on in that vein, then. I'm interested in knowing about this distinction between the current 70% of brand to the 50%. I suspect the government is going to dig in its heels at the 50% level. Would you like to see that in regulation or would you like to see—

Mr. Fretz: I'd like to see it not at all, quite frankly. I was aghast that that was part of the bill.

Mr. Jackson: How is it that your association and any drug manufacturer, whether you're generic or not, will be protected in terms of pricing under the new mechanism of having an unelected body develop that pricing with no appeal mechanism?

Mr. Fretz: It's a serious challenge, Cam. It's an issue—I think the brand presenter earlier referenced PMPRB, which is in place, which affects brand pricing. You also know that the provinces are in dialogue and are part of NPS, which also looks to pricing. Mr. Oberman from Novopharm referenced earlier some of the more recent studies that have been done that qualify the pricing of generics in Canada and substantiate the prices at which we're already selling in the market—

The Chair: Thank you, Mr. Jackson. Ms. Martel.

Ms. Martel: Thank you for being here. You said you wouldn't like to see that reference change to 50% at all, so I'm going to ask you the same question now. In the presentation by Novopharm, it was very clear that they were advocating for a two-step pricing model and that essentially "the minister leave the current system of first generics at an initial price of 70% of brand to ensure future investment and innovation." Would that be your position as well?

Mr. Fretz: Absolutely.

Ms. Martel: Should I gather, although we're going to hear from the association next week, that among the generics that would be the position?

Mr. Fretz: I would let the association speak on behalf of all companies. It's not my purview to speak on behalf of or for other companies.

Ms. Martel: Have you directed that concern to the ministry yourself—never mind the industry, but yourself as a company?

Mr. Fretz: Previous dialogue has expressed concern about the arbitrary reduction in price.

The Chair: Thank you, Mr. Fretz, for your deputation on behalf of Cobalt Pharmaceuticals.

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INSTITUTE FOR OPTIMIZING HEALTH OUTCOMES

The Chair: We welcome our next presenter, Ms. Durhane Wong-Rieger, president of the Institute for Optimizing Health Outcomes.

Dr. Durhane Wong-Rieger: My name is Durhane Wong-Rieger. I am the president and CEO of the Institute for Optimizing Health Outcomes. We are a not-for-profit organization that is dedicated to improving health outcomes of Canadians living with or at risk for health conditions. We work in partnership with health care institutions, we work with health care providers, we work with other patients' organizations, patients' families, and we work with the governments to develop and implement a variety of innovative programs for research. We provide education, and we're conducting large-scale programs on self-management.

I also am personally the president of the Canadian Organization for Rare Disorders, and I sit as the secretary of the Canadian Hepatitis C Network and also as the secretary for Canadian Fabry Association.

I'll start by saying that there certainly is support from our institution of the need for reform of the Ontario Drug Benefit Act. We recognize that drug plan costs are rising, but we also recognize that Ontario patients are not getting access to new medicines. There's much in the policies and in the bill that we can see as benefits to patients, but in the interests of time, I'd like to focus on a number of concerns that we do have.

First of all, we have some underlying concerns with regard to the principles and the process of Bill 102. The government unfortunately has not made available the evidence, the research, the statistical analyses and the background documents that would normally justify the recommendations and changes proposed in such a sweeping bill as 102. We in the public actually have no way of knowing whether the government's calculations and conclusions are valid. We have no way of confirming that the recommendations are based on solid analyses and will generate the benefits concerned. I ask, if the process thus far has lacked transparency, how can the public trust that there will be greater transparency in the future?

I also want to point out that there has been insufficient time for genuine stakeholder consideration of the proposed policy changes in, again, such a sweeping bill as Bill 102. There has been inadequate time allocated for hearings here, and I point out that there have been a very limited number of patients and patient groups among those presenting at the hearings. There are only three today that I recognize.

If we do not have sufficient consultation leading to this legislation that will determine the regulations and policy, what confidence can we have in the promise that has been made to us for adequate patient participation and consultation in the development and implementation of the regulations and policies?

I'll move to some very specific concerns. I do have a major concern around the stage for therapeutic substitution that has been set by the language in Bill 102. It does allow the executive officer to declare as interchangeable drugs with "similar active ingredients." There is no such thing as a scientific process for determining what is a drug with a similar active ingredient.

We have a process for declaring a generic substitution. It is a process that the manufacturers have to go through

in front of Health Canada, demonstrating that there is pharmacodynamic and pharmacokinetic equivalence. There is no such thing for declaring interchangeable drugs with similar active ingredients or similar activity.

We are concerned that Bill 102 also encourages competitive pricing—not that that, in and of itself, is bad—but coupled with this, it will certainly set the stage for the government to allow a category of so-called similar drugs to be designated, ask the companies to compete on those drugs and then force physicians to prescribe to the lowest-cost drug in that category of so-called similar drugs, again without any scientific basis that these drugs are indeed similar.

The bill technically might not say “reference-based pricing”; it might technically say it does not interfere with the physician-patient relationship. However, I would say that pressure will be applied at the physician level to prescribe only the lowest-priced drug that is listed, without consideration for the specific patient.

We would also like to raise concerns regarding the rapid review. The revisions to allow for rapid review are certainly welcome. However, we would like to point out that this can only be of benefit for breakthrough drugs if in fact the government will recognize that these kinds of breakthrough drugs—especially for targeted patient populations, and especially for rare disorders, which I represent—are going to be more costly than the old chemical entities. They’re going to be more costly than new versions of existing drugs, than the me-toos. To ensure that a rapid review does not lead just to a rapid “No,” we have to recognize that the usual criteria for cost-effectiveness or cost savings cannot be applied here.

I point out that the Ontario government has yet to follow through on its 2004-05 commitment to rapid access to breakthrough drugs for two rare disorders: Fabry and MPS1. If we can’t have faith that the government will follow through on these positive rapid reviews, how can we have assurance that this bill will provide for more?

Just quickly, then, we also have concerns with regard to accountability for the executive officer, and support those who have asked that there be a second review process in place so that all negative decisions, in fact all key decisions, around interchangeability, rapid review, drug listing, delisting, conditional listing and exceptional status have to be open to some process of review.

My final statement here is that we do have concerns regarding the viability of pharmacies. We personally have no way of knowing whether or not the impact that is being claimed in terms of Bill 102 on pharmacies is legitimate. What we are concerned about is that there is wide discrepancy between what the government is claiming is the impact and what the pharmacies are saying is the impact. Unfortunately, again, without access to the government’s background documents, their research and cost analyses, we have no way of knowing who is actually correct.

We do believe that there has to be a sufficient number of viable pharmacies in our communities. They’re vital to

the safety of patients. We do support that pharmacies should be compensated appropriately for the losses sustained through the changes in Bill 102, and we urge the government again to make those available to us.

In summary, I would like to say there is much that we do support. We certainly recognize the need for change, but we recognize that there are some real key elements of Bill 102 that need to be addressed, and we are very concerned that the period of time for comment and the period of time for even this committee to make its recommendations is far too short for such major changes.

The Chair: Thank you, Ms. Wong-Rieger. We’ll begin with the PC side, about a minute each.

Mrs. Witmer: Thank you very much for an excellent presentation. It certainly comes to us with a bit of a different perspective, which I appreciate.

You mentioned access to the new drugs and that some changes are going to have to be made, because if it remains the same, we’re still not going to see improved access. What, primarily, will the government have to do in order to ensure that these new breakthrough drugs are made available if they’re deemed to be appropriate?

Dr. Wong-Rieger: There is nothing, number one, in the bill or even in the government’s background documents that acknowledges, first of all, that we don’t have access to new medicines. I think there has to be specific recognition that these are not going to be drugs that cost the same as the me-too drugs. As we have seen in the Common Drug Review, none of the breakthrough drugs that have been submitted for adoption by the Ontario drug benefit plan has actually been listed.

So we have to have some new rules. We have to have new criteria. We have to recognize right up front that these are more costly drugs. Unless we build that in, I don’t think we’re going to have anything but a more rapid “No.”

The Chair: Ms. Martel of the NDP.

Ms. Martel: Thank you for your presence here this morning. I want to focus on two things, first, some of the important proposed policy changes that don’t appear in the bill. You talked about the committee to evaluate drugs—not in here; the formation of the citizens’ council—not in the bill; the creation of the pharmacy council—not in the bill; the process for faster drug funding decisions—not in the bill; a new process for unlisted drugs, special cases, the old section 8 process—not in the bill; the rapid review process for breakthrough drugs—not in the bill; even a definition for “breakthrough drugs”—not in the bill, and the list goes on and on. So we’re kind of buying a pig in a poke, because we don’t have any idea of what’s going to come out here at the end of the day.

My second point: Here’s the fact sheet the government put out on the projected savings. It says \$289 million. There’s been no other information released on how they’re going to get there. One of the interesting ones is \$67 million, having the federal government become the first payer for its employees, an agreement that’s not even in place. So there’s no guarantee they’re going to

get that \$67 million. How do you feel about trying to deal with a bill where so many things that the government promised didn't actually make their way into the bill?

Dr. Wong-Rieger: Two things: One, as you say, we are very concerned that we have been given none of the background documents. Normally we would expect to see at least a white paper, at least see the analyses, and this is a promise—

The Chair: With apologies, Ms. Wong-Rieger, I will have to intervene. To the government side.

Ms. Wynne: Thank you very much for being here, and thanks for your comments. I just wanted to go back to the very beginning of your presentation around the consultation issue. I wanted to make sure you were aware of what did lead up to this bill and why I personally have faith in its integrity.

Are you aware that in June 2005, the Drug System Secretariat was established, and a system-wide review began at that point? There were 250 experts from around the world who were consulted. The folks from the secretariat visited two jurisdictions; They went to the UK and they went to the US. They received 100 submissions, and held 105 meetings with 350 stakeholders. There was a public forum for patient groups and they did public focus group research. That was before we went into this process, which is the discussion of the legislation. So that seems to me a year-long, pretty substantial consultation.

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Dr. Wong-Rieger: We participated in a lot of that. We appreciated everything that was done then. However, we are still saying, where are those background documents, what was the research and the evidence that was collected. Let us see what it is.

Secondly, this part of the process, with the bill coming out, which is the keystone of what this is supposed to be: There has been very little time for consultations, very little time for review on this part of it, and this is what everything is going to be based on.

The Chair: Thank you, Ms. Wong-Rieger, for your deputation on behalf of the Institute for Optimizing Health Outcomes.

CARPENTERS AND ALLIED WORKERS, LOCAL 27

The Chair: I now invite our next presenter, Mr. Mike Yorke, vice-president of the carpenters' union, Local 27, and colleagues. Please be seated, gentlemen. As you've seen the protocol, you have 10 minutes in which to make your deputation. Please do also introduce yourselves for the purposes of the permanent record, Hansard recording. Please begin.

Mr. Ucal Powell: Thanks, Mr. Chairman. Good morning to the committee. Unfortunately, Mike Yorke isn't here today. My name is Ucal Powell. I'm the president of the Carpenters' District Council of Ontario. At my right is Mr. Brian Foote, director of labour relations for the general contractors' section of the Toronto Construction Association. On my left, Mr. Mike Neheli from the firm

of Manion, Wilkins & Associates. We're going to be teaming a little bit with respect to our presentation. Mr. Mike Neheli will be doing the technical side of things and Mr. Foote will be addressing some issues after with respect to some concerns we have that are presently not in the bill.

Mr. Foote represents the management side of the construction industry, and myself from the union side. We're both trustees on the carpenters' health and welfare plan, which provides health and welfare benefits for our members, and we're really concerned about the issue with the cost of drugs. At this time, I'd like to turn it over to Mr. Neheli, who will be dealing with the technical side of our presentation.

Mr. Michael Neheli: Thank you, Ucal, and good morning. As Ucal indicated, Manion Wilkins is a firm that provides third-party administration services to our multi-employer benefit clients. We're responsible for the administration of their health and welfare programs. In the past year, we've seen in excess of \$16 million coming through the trust fund book of business in relation to prescription drug costs. Over the last four or five years, these prescription drug costs have almost doubled. This has forced the plan sponsors to look at various cost containment initiatives in terms of still providing a meaningful health care program to their members without limiting or reducing the quality of health care. In doing so, they've adopted a tiered formulary that recognizes the ODB as the primary provider. Under the ODB formulary, reimbursement is at a prescribed co-insurance level. Any drugs falling outside of that formulary are then reimbursed at a different co-insurance level.

We fully support and endorse the recommendations in the bill with respect to generic drugs being added to the ODB formulary because we believe that, through the generic drug program, additional savings have, in fact, been realized. On our book of business in 2005, approximately 83% of the prescription drug claims that went through were done so based on the ODB formulary, 17% of which were non-ODB. I believe that the more important statistic we've identified is that the percentage of generic multi-source or single-brand drugs was clearly indicating that single-source drugs were the largest, as a percentage, of the net cost incurred by these benefit programs. But as a percentage of the number of prescriptions put through the programs, generic drugs were roughly 37% to 40% of the prescription drugs coming through—single-source, multi-source or generic. So we strongly see that there will be advanced opportunities for the members through these programs to realize additional savings through the enhancement of availability of generic drugs through the ODB platform.

Mr. Brian Foote: One concern we wish to raise—and again, it's a joint union-management committee that is appearing before you, Mr. Chair—is something that does not appear to be in the bill but was in the recommendations of the aforementioned secretariat, namely, the move to second payer for ODB of over-65 retirees. In the construction industry currently, with the health of the

industry in the industrial-commercial and residential sides, we have a huge number of retirees currently back working, essentially, with the aging of the force and the shortage of skilled workers. Those persons are covered by our plans; however, we are not first payer in respect of the over-65s. In introducing the bill, the minister indicated that there would be no change in eligibility of those payments, and we believe that to be the case. However, we would raise the caution that we would oppose any such move in the future, and it is contained within the document, along with the reference to the federal public service plan. Thank you.

The Chair: Thank you, gentlemen, for your deputiation. You've left a very generous amount of time for questions. We'll begin with the PC side, about two minutes each. Ms. Witmer.

Mrs. Witmer: I'd just like to ask you: What do you think about the rebates that currently flow to the pharmacists? How do they impact the lives of the people that you represent?

Mr. Neheli: We attempt, as best possible, to make sure the benefit programs are clearly communicated and understood not only by the plan sponsors—in this case, the boards of trustees—but also the members. In doing so, we believe it's important for the members to understand that their prescription drug costs are made up of two components: the professional dispensing fee as well as the ingredient cost.

The communications also identify the opportunities for the individual pharmacists to mark up their pricing. What we've done is incorporated a cost control mechanism into our program to limit the markup to 10%. With respect to the rebates, I think it brings an added cost to the benefit program, but based on the structure that we have in place, I think we've capped the ability for that rebate to go back.

Mrs. Witmer: I guess this is a very big concern to the pharmacists as far as their sustainability. Without the rebates or some form of professional allowance—

Mr. Neheli: No question.

Mrs. Witmer: —a lot of them are not going to be available to dispense the drugs to the people you serve.

The Chair: Thank you, Ms. Witmer. Ms. Martel.

Ms. Martel: Thank you for your presentation. I want to go back to your last comments about first payer. Can you just clarify that for me? Right now, for your retirees, the plans are not the first payers because they would be covered under ODB.

Mr. Foote: Correct.

Ms. Martel: Okay. And now people are coming back, after age 65—

Mr. Foote: Yes.

Ms. Martel: —to continue to work, and there would obviously be a change, because now they would be back on your plan.

Mr. Foote: We have no mandatory retirement in the construction industry. People can work as long as they want, but we have many people who do retire at 60, 62,

65 who are now back at work. Our oldest working carpenter is 73, I believe.

Ms. Martel: So when the minister said on second reading that he wanted to reassure people that there wouldn't be any change with respect to the copayments that they pay etc., that's what your reference is to right now, because yes, there will be a change for those folks.

Mr. Foote: We can't find the reference in the bill. I admit I just reviewed it twice yesterday, but if it were to be there, yes, there would be a change. There'd be an increased cost to us. Furthermore, in the construction industry and many industries, we bargain on a total wage package basis, so to the extent that the health benefit cost goes up—it's an hourly premium—that comes out of the wages allocated to the worker. So it would be a cost directly to the worker if that was to be implemented.

Ms. Martel: Right. Your reference to the fact sheet—because you've seen this?

Mr. Foote: No. I saw the report of the secretariat. That's where I drew that information from.

Ms. Martel: Could you share that with the committee? You don't have to do it now, but if we could get photocopies of it, that would be really useful.

Mr. Foote: It's on your website, I think.

Ms. Martel: Is that the stakeholder copy? Because there was an MPP copy, there was a media copy, and then there was a stakeholder copy—

Mr. Foote: The briefing to stakeholders.

Ms. Martel: —and each one was a little bit different. Thank you very much.

The Chair: Any written materials, whether it's on the web or not, feel free to duplicate. It's not a problem.

We'll move to the government side. Mr. Peterson.

Mr. Peterson: Thank you very much for your presentation. The two driving forces of us proceeding with this bill were that the industry wanted a reformation of the way business was done, and they've been asking for it for over 20 years. We're the first of three governments that have looked at it, and we're the only one to tackle it, because we thought that the government was not getting good value for its large purchasing power because of the high volume of these rebates, and that we should be able to reflect the lower price. You've mentioned that the generic goods will help us save money.

But the other one is the sustainability of the medical care system. We all know that the medical care system, if it hadn't been reined in and cost control hadn't been put in place, would have been occupying over 50% of the total budget of the province of Ontario. We're now at about \$32 billion to \$33 billion of a \$78-billion expenditure, and that was anticipated, if the growth levels hadn't been curtailed, going up to 50%. Frankly, we would not have been able to maintain our health care system.

The drug benefit program at about \$3 billion is a little less than 10% of that program, and it was spiralling. We've heard lots of suggestions as to how good drugs and use of drugs can actually curtail costs in our health care system by keeping patients at home and having patient-focused things, and not in hospitals, not in clinics.

Right now, all your payments for all of your senior people are covered by the age exemption under the ODB. What percentage of your people are covered by private plans or are we the main insurer for them in the drug benefit plan?

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The Chair: Mr. Peterson, that's another question that will have to remain rhetorical. I will thank, on behalf of the committee, Mr. Foote, Mr. Powell, Mr. Neheli, and Mr. Yorke in absentia, for your deputation on behalf of of the carpenter's union, Local 27.

I understand we have a point of clarification, Ms. Martel.

Ms. Martel: I'm looking at page 7 of the stakeholder briefing. The second point says "Secondary payer," and the government says, "We intend to become the second-in-line payer for the federal public service health care plan and for working seniors with private insurance plans." It says, under "Further consultation," "Discussion with federal government."

There's no discussion going on here with employers. I would like some clarification from the ministry—it doesn't have to happen now—because I don't think this is in the bill either. So I'd like to know for sure whether or not this is in the bill, and I'd like to know what kind of discussions the ministry has been having with the employer community around that particular provision, which would clearly have an impact on these folks.

Mr. Powell: In this case, it's not only employer, it's joint labour-management—

Ms. Martel: Absolutely, Brother, you're right. Sorry about that.

Mr. Foote: We never fight.

Ms. Martel: Well, okay.

The Chair: Thank you, Ms. Martel. Your questions and comments have been duly noted by the parliamentary assistant. I leave it to them to respond, either now or at a later time.

HAWTHORNE PHARMACY

The Chair: I'd now invite, on behalf of the committee, our next presenter, Mr. Faisal Khawaja, the owner of Hawthorne Pharmacy. Mr. Khawaja, as you have seen, the protocol is 10 minutes, which begin now.

Mr. Faisal Khawaja: My name is Faisal Khawaja. I'm a pharmacist. I'm also a husband, father of four children and sole income earner in my household. My practice is a mom-and-pop operation located in the town of Milton, Ontario. My patients are mostly young families, moms and dads with infants or small children. I provide service in this already underserved area of the province.

When Bill 102 was announced, some colleagues and I immediately undertook a full analysis of the bill with an MBA facilitator to determine what the impact would be on the various stakeholders. It didn't take long to determine that the impact was going to be devastating to many pharmacies, like a tsunami that nobody had expected was

coming. We developed a document called the Pharmacy Sustainability Report and e-mailed it to every MPP at Queen's Park, along with an executive summary entitled "The Real Impact of Bill 102." I know some of you have read it because it has been quoted on several occasions in the Legislature in the past few weeks.

Pharmacies and patients will suffer negative impacts as a result of this bill, while all other stakeholder impacts are neutral or positive. The primary problems, as we have identified them, with the bill are:

—The elimination of free market competition between generic manufacturers, in the form of promotional allowances, a step which is antitrust in every sense of the word. Competition is the cornerstone of our economy and the government seeks to stifle that with this bill.

—The proposition that the bill applies to private prescription business as well as that paid for by government is simply unfair.

—Furthermore, the government is already free to set prices for the drug benefit formulary as it sees fit. Why not just control prices from the manufacturers, which achieves the desired savings, and leave the competitive process intact?

—The bill focuses mostly on generic manufacturer allowances, but 85% of the drug dollars spent are on brand name products. Bill 102 is penny-wise and pound foolish.

—It proposes to reduce markup on drugs from 10% down to 8%. The problem with this is that wholesalers take approximately 5.6% of that, which means we're going from effectively from 4% down to 2%. Our effective markup is reduced by half. This will be on reduced drug prices to boot. Furthermore, about 800 drugs are actually at 0% markup because manufacturers have increased prices to pharmacies and ODB has not matched those increases in their payments to us over the years.

Pharmacists are front-line, primary health care providers. We provide tremendous value for the taxpayer's dollar already. In my community, as in every other community in this province, patients typically come to their pharmacist, to me, first, when they have a health care complaint. They do this because I have earned their trust and because I am accessible to them. We see patients without an appointment, and most pharmacies are open extended hours. They come to us first because we have their confidence and their support. This was evidenced last year when almost 700,000 Ontarians put pen to paper to petition the government to give pharmacists a greater say in how health care policy is developed in the province. I regret to advise those Ontarians that their behests may be falling on deaf ears.

In addition to helping patients self-diagnose ailments and recommending treatments, pharmacists play a critical role in triaging patients. Just last week, a young lady came in wanting me to recommend something for her husband's persistent night-time cough. After I took a brief history of his symptoms from her, I decided to call him on the phone. It became clear to me that he needed more than just a cough syrup. I advised that he should see

a doctor without delay. He did, and as it turns out he had walking pneumonia and would likely have ended up in the hospital emergency room or worse had I not sent him to the doctor.

Furthermore, pharmacists prevent unnecessary trips to the doctor and hospital as well. I screen patients who have symptoms, for example, of a viral cold, for which there is no curative drug treatment, and offer them a plan of care, including symptom control, and under what circumstances they might need to see a doctor later on. Very often an assessment leads to no product sales at all, but rather non-drug management and health promotion advice. I work hand in hand with the physicians in my community to make sure patients are getting the best health care possible. Pharmacists do this every day.

My pharmacy is a focal point in the community. It is a central point of access not only to medications, but to current health care information and objective, unbiased advice—a commodity that is very much threatened in today's health care system. Patients tell me how wonderful it is to have a pharmacy within their community, how thankful they are they don't have to drive 20 minutes to get a medication for their crying infant, and how happy they are to have a real partner in the management of their family's health care.

At my pharmacy, I also provide a state-of-the-art blood pressure screening station, individualized care plans and one-on-one health teaching on diabetes, asthma and high blood pressure. I offer medicine cabinet clean-ups, compliance interventions, anti-embolism stocking fittings, and the list goes on and on. All of these services will be eliminated if Bill 102 passes without amendment.

If my pharmacy is forced to close, larger stores may be happy to pick up the pieces, but the 45-minute wait times that are not uncommon in busy stores for prescriptions will just get longer and longer the more prescriptions they have to fill. I can't imagine why they would even want to. When you are losing money on every prescription, you can't make it up on volume. Higher volumes just mean bigger losses. I believe those companies are starting to figure this out.

At this time, my practice is approximately 20% public, which is ODB, and 80% private, which is non-ODB claims. This is a much lower proportion of ODB prescriptions than the typical 50-50 split that might be seen in most pharmacies. You might think, then, that I have little cause for alarm. This is one of the most insidious parts of Bill 102: It doesn't just propose to eliminate profits from ODB claims; it applies to all prescription claims, public and private. I am left with no way to offset the bleeding losses from my ODB claims.

I had the opportunity to speak directly with Minister Smitherman at some length shortly after the bill was announced. I did not get the sense at that time that he had it in for pharmacists. In fact, I was, and I still am, completely convinced of his sincerity in that:

—He hopes for a sustainable drug budget. So do we; our livelihoods depend upon it.

—He hopes pharmacists will continue to provide excellence in patient care and outcomes from medication

therapy. So do we; it is the very reason our profession exists.

—He recognizes that pharmacists play the central role in achieving these outcomes, and has announced long-overdue cognitive service funding in the bill. However, this was funding we had requested to cover the cost of cognitive services that we have been providing for free for many years. This was supposed to be new money.

This committee must find that Bill 102 is seriously flawed. It is flawed in its commitment to protect the health care of Ontario's patients, it is flawed in its failure to ensure the sustainability of that critical health care resource which is the local pharmacist, and it is fundamentally flawed in not recognizing that one depends directly upon the other.

I, my family, my patients and my community implore this committee to see to it that the amendments to Bill 102 proposed by the Ontario Pharmacists' Association are implemented in their entirety prior to the bill's third reading and vote. This will at least provide us with some hope for a balanced outcome that does not leave patients without the pharmacist of their choice, and leave pharmacists and their former employees looking for work.

We respectfully request that the assurances that have been made by the government in the past few weeks actually be written into the bill.

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Finally, we ask that the government acknowledge and respect the wishes of the almost 700,000 Ontarians who instructed this government to give pharmacists a greater say in how drug policy is implemented in this province. We are accountable to these petitioners. If you ensure pharmacists a meaningful leading role on the pharmacy council, the people of this province will thank you, which is much better than us going back to them to tell them that their demands were ignored by this government.

In our handout you can see what I've proposed to fix Bill 102. Essentially, it's to accept OPA's requested amendments to the bill. I would also like to mention that my pharmacy—I am a member of the Coalition of Ontario Pharmacies, whose message and mandate is right in line with OPA, so we have a very consistent message and represent more than 85% of Ontario pharmacies. I thank you very much for your time.

The Chair: Thank you, Mr. Khawaja. We have 30 seconds each, beginning with Ms. Martel of the NDP.

Ms. Martel: I'm glad to put the quote in from the minister to replace that revenue stream, because everything we've heard to date is that the revenue stream is not being replaced; far from it: People are going to suffer some tremendous loss. You will know the pharmacy council is not even written into the bill in terms of a detail.

Mr. Khawaja: That's correct—very disappointing.

Ms. Martel: You should know that the reference to the services you provide is pretty vague. It says, "To pay operators of pharmacies for professional services, and to determine the amount of such payments subject to the prescribed conditions, if any."

The Chair: With apologies, Ms. Martel, I have to intervene and offer the floor to Dr. Kular, of the government side.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): First of all, thank you very much for your presentation. The government intends to make pharmacists front-line health workers.

Mr. Khawaja: We already are front-line health workers, yes.

Mr. Kular: I am a family physician, still practising family medicine, so I know what pharmacists do. The government is providing \$50 million, educational allowances, making the markup 8%, removing the \$25 cap. I would ask you, what are two more things you would like us to do besides these—

The Chair: With apologies, Dr. Kular; to the PC side.

Mr. Khawaja: A fair system would be good.

Mrs. Witmer: I'd just like to pick up on the fact that despite all the promises we've heard, very little in the way of what's actually going to be involved in providing recognition for the cognitive services you provide is contained anywhere in the bill. The only thing we know is that you're going to lose the rebates and, as a result, there's certainly a threat to the sustainability of pharmacists and pharmacies. I hope the government will put something in the legislation in order that pharmacists can be reassured they can continue to provide front-line services.

The Chair: Thank you, Mr. Khawaja, for your presence and deputation and written materials on behalf of Hawthorne Pharmacy.

COMMUNITY HEALTHCARE PROVIDERS' NETWORK INC.

The Chair: I would now invite our next presenters, Terry McCully, CEO of Community Healthcare Providers' Network, and colleagues. As you've seen, Mr. McCully, the protocol is 10 minutes in which to make your presentation, which begin now.

Mr. Peter Yurek: Good morning. Mr. McCully is unable to attend. I'm presenting on his behalf. My name is Peter Yurek, of Yurek Pharmacy in St. Thomas. With me is Steve Flexman, of Clark's Pharmasave in Simcoe, Ontario. We're presenting today on behalf of the Community Healthcare Providers' Network, which is comprised of 22 community pharmacies and one hospital-operated pharmacy. We provide home infusion services to approximately half of the CCACs in Ontario. Most of our members serve rural and northern CCACs, where often no alternative suppliers are available.

My presentation will focus on the impact of the proposed bill on the pharmacies that provide home infusion services, the resulting effect on CCAC clients and, ultimately, the hospitals in our community.

If the bill is passed as proposed, it is unlikely that our member pharmacies could continue to provide services, resulting in more patients having to stay in hospital to receive treatment. Home infusion pharmacies compound

sterile IV prescriptions that the nurses contracted by CCACs administer in homes across the province. We play a vital but largely unseen role in providing health care services in the home rather than in the expensive hospital environment. We estimate that at any given time, Community Healthcare Providers' Network members are helping to keep 1,000 patients out of hospital and emergency departments in Ontario.

Home infusion pharmacies have large start-up costs and must be dedicated to ongoing quality improvement. Page 7 of the handout that accompanies this presentation details the start-up costs for one of our new members. It was in excess of \$200,000. There are less than 30 pharmacy operations across the province that can provide this service, and the barriers for new companies to enter this business are huge.

I welcome the fact that Minister Smitherman has withdrawn the \$25 cap on the markup; however, other concerns do remain. The loss of the promotional allowances or rebates by the generic manufacturers to pharmacies will also have a severe impact on the viability of our pharmacies. On page 9 of the handout, a financial analysis shows a profit margin of 30% for prescriptions dispensed under the current system, with the rebates being taken into account. This positive profit margin is turned into a profit margin of -3 % for prescriptions dispensed under Bill 102. The rebates that our members receive account entirely for the profit that is generated.

The May 2005 Caplan report, *Realizing the Potential of Home Care*, addressed home infusion pharmacy and the need for quality standards to be developed. It is unlikely that the very home infusion pharmacists who have developed the skills and systems for CCAC services over the last six years would be able to provide the time to the OACCAC committee developing the guidelines. Bill 102 will effectively stop any quality initiatives recommended by Caplan for home infusion dead in their tracks.

Bill 102 is not the only consideration for home infusion pharmacies; however, it compounds the problems that already exist in the reimbursement model, where the time and amount allowed by the Ministry of Health to prepare IV medications is not representative of the actual costs to prepare the drugs.

Delivering home infusion services requires advanced skill levels for pharmacy staff, and with an estimated operating loss of 3% after Bill 102, a number of our members could cease to provide services. If our members chose to no longer provide these services, considering the limited number of providers available in Ontario, the high skill levels required, the large start-up cost and the poor return on investment, it is likely that the patients who currently receive home infusion would have to go to their local hospital to receive their IV therapy. The communities that would be hardest hit would be the smaller rural ones that our community pharmacies predominantly serve.

In closing, I respectfully urge this committee to consider the consequences that this bill will have on home

infusion pharmacies and, ultimately, on CCAC clients. I would ask this committee to recommend that the pharmacy council be entrenched in Bill 102 and that the OPA be recognized as the chief negotiator for pharmacy. This would ensure that we have a vehicle to address issues such as not being properly reimbursed for time taken in preparing infusion medications. I would also recommend that the limit on investment through the code of conduct be removed and allow the market to determine what limit the investment should be. It is disappointing that there has been so little consultation on this bill and that there are still so many unanswered questions on a bill that will have such a large impact on the people of Ontario.

I strongly urge the government to clarify the issues brought forward by the OPA. Whether you are an infusion pharmacy or a retail community pharmacy, rebates have served to fill the gap created through inadequate government funding. Bill 102 takes a lot of money from pharmacies, with little given back. The result would be devastating for pharmacies that provide valuable home infusion services.

The Chair: Thank you, Mr. Yurek. We have about 90 seconds per side, beginning with Dr. Ramal.

Mr. Khalil Ramal (London-Fanshawe): Thank you for your presentation and for doing your service on behalf of all the rural areas and small communities. I know how important for small communities, especially in rural areas, the pharmacists are, playing the role of doctors and hospitals on many different occasions.

I just want to ask you some questions. I want to tell you that, on behalf of our government, we do government differently. We ask questions and we listen to the answers. You noticed the announcement yesterday by the Minister of Health about the \$25 cap being eliminated. That's why we have this format today, to listen to many pharmacists and stakeholders. We hope that when we come to clause-by-clause, we have some kind of amendment to help the pharmacists and pharmacies across Ontario to survive and continue servicing the people of Ontario.

Another thing you talked about was the reimbursement from generic companies and many different drug companies. How much of a percentage does that rebate represent for your company?

Mr. Yurek: Overall, it's probably in the 8% to 10% range of gross revenue.

Mr. Ramal: Is that in the form of cash or drugs? Which format?

Mr. Yurek: It's cash back, a cheque.

The Chair: Thank you, Dr. Ramal. We'll move to the PC side. Ms. Witmer.

Mrs. Witmer: Thank you very much for sharing with us your role. As you've indicated, it is a relatively new role that you have assumed, and it's really very valuable work. As a result, you're obviously having a tremendous impact. What in particular is the government going to have to do in order to ensure that the business you're providing is going to be sustainable? It's great for the

government to say, "Here we are listening to you," but the reality is that a lot of the listening could have been done before the bill was introduced, and we wouldn't be here. What is going to have to happen in order for your very specialized business to be able to continue to show a profit and deliver services to patients?

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Mr. Yurek: The big issue would be to fairly replace revenue taken off from the loss of the rebates. The second issue, which isn't addressed and which I highlighted in here, is that the time issue to prepare the medication is large. I believe the government in the past tried painting everybody with the same brush—

Mrs. Witmer: Exactly.

Mr. Yurek: —but home infusion has huge time issues, especially when you're preparing a TPN, and expense and equipment and building to create the environment to provide safe medication for the people we serve.

Mrs. Witmer: Have you had an opportunity to meet with the ministry staff at all on this particular Bill 102?

Mr. Yurek: No.

Mrs. Witmer: So that would be useful to you, to meet one-on-one with the staff and review with them how they could support you in providing this service.

Mr. Yurek: Yes. We've met with some staff with the OACCAC last summer when we talked about some of these issues.

The Chair: Ms. Martel of the NDP.

Ms. Martel: Thank you for being here today. I want to go to the mixing time fee on page 10. It says that you're paid 50 cents per minute to mix or compound the drugs, but this is much more timely, given what's being dealt with in this regard. The second item that was interesting is, it's capped at 99 minutes by the ODB because of the limitations of their software systems. Do you want to tell me what that is?

Mr. Yurek: Apparently, the Ministry of Health computer will only accommodate two digits in billing for time. It's not uncommon, especially if you're just starting a TPN medication, to spend a couple of hours just doing the calculations before you even get to the point of mixing it.

Ms. Martel: So you'd be far beyond.

Mr. Yurek: Yes.

Ms. Martel: In the markup allowed by ODB—because you clearly say that "the bill does not stipulate that this 8% markup is before or after wholesale charges." Which did you use, then, for your column on Bill 102? This is on page 10.

Mr. Yurek: I think we went with a clear 8% markup on that calculation.

Ms. Martel: Eight per cent on wholesale.

Mr. Yurek: Wholesale, yes.

Ms. Martel: Because what would be the change if it—

Mr. Steve Flexman: It would be more like 4% that we'd really get.

Ms. Martel: So can you give us an estimate of the loss of income? Right now, you've gone with the best—

case scenario, essentially—in terms of the markup, at least—on your figure on page 9, right?

Mr. Flexman: I guess effectively you could add another 4% loss to the 3% lost revenue already—

Ms. Martel: At the bottom.

Mr. Flexman: Not revenue, but profit; sorry.

The Chair: Thank you, Ms. Martel. Thanks to you as well, Mr. Yurek and Mr. Flexman, for your deputation on behalf of the Community Healthcare Providers' Network.

LEON PHARMACY

The Chair: I would now like to, on behalf of the committee, call our next presenter forward: Mr. Ramez Tawfik, the owner of Leon Pharmacy. As you've seen, Mr. Tawfik, the protocol is that you have approximately 10 minutes in which to make your presentation, which begins now.

Mr. Ramez Tawfik: Thank you very much for allowing me this opportunity. My name is Ramez Tawfik. I have been a licensed pharmacist in Ontario for approximately 11 years. I have owned Leon Pharmacy in Oakville for approximately nine years. I am a third-generation pharmacist. My dad, who is 72 years old, still owns and operates full-time his own independent store. I was raised in that store with my father. My wife Maggie is a pharmacist and my brother-in-law is a pharmacist too. My dad and his ownership of his independent store were the main reasons for me going into pharmacy.

I love my profession and was raised on the firm belief in community pharmacy and what it represents as a value to the public. I serve a large community of seniors located in a limited-income neighbourhood on Kerr Street, south of Speers. My seniors are low-income seniors. Low-income seniors are the ones who make less than \$16,000 a year or a maximum of \$1,300 per month. A low-income senior couple makes approximately \$600 each per month. This is to cover costs for housing, which eats up a major portion of their income, clothing, food and transportation. That sum usually runs out before the end of the month. They rely primarily on their children to help them with their living costs if their children can afford to do so. I run a tab at my store for these patients so they can pay it down whenever money becomes available, like at Christmas time when their children are visiting them. They are not given any leniency at chain or grocery stores. It is the humanitarian touch that I am able to give to them.

My seniors consider me as their friend and talk to me about their medications and health concerns before going to their doctor. If I close, their doctors will be bombarded by hundreds of calls and questions daily.

Senior patients have daily living expenses that are not covered by OHIP: expenses for incontinence supplies, personal hygiene, diabetic supplies and many more. These patients have very limited income and are barely surviving with government grants. I will not be able to offer them the break that I currently do on their day-to-

day expenses if Bill 102 passes the way it reads today. I will not be around if Bill 102 passes.

I also serve a group of brain-injured patients, PHABIS. These patients have acquired brain injuries after tragic incidents or car accidents. These patients need exceptional care. I am on call 24 hours a day, seven days a week, for these patients to answer their challenging questions: missed or refused medications, emergency changes in their blood sugar levels.

I serve one home in Oakville, three in Mississauga and one in Brampton. I know each patient like the palm of my hand. I know every single medication they are on. I offer them services, visit them and consult with their medication policy reviewers to establish individualized protocols for over-the-counter and prescription drug treatments for their chronic conditions.

Personally, I visit them at their home to offer them personal advice, talk to their parents, bring them gifts and arrange special events for them like Halloween and Christmas parties, not because I have to do so or it's my duty, but because of the love I have for these patients and their caregivers, and ultimately because I love being a pharmacist.

When I started my business, I had to contend with goodwill loans, inventory loans, escalating hydro bills and business improvement taxation, in addition to professional service fees like the College of Pharmacists and OPA memberships. Hiring competent staff to run my store, ancillary jobs, are a huge part of my business. I employ three part-time pharmacists, three full-time technicians and two part-time technicians, and retain three delivery personnel. It is very costly running a small, independent store.

I have learned to communicate with my patients in Italian, Portuguese, Punjabi and French, even though none of them is from my background, because of the firm belief of the message for my patients and the primary concern, which is their health.

Removing the marketing allowances, the 8% markup, or 2.4% after sharing it with wholesale, is not a possible model for my store. It has been my heart and soul for nine years, and Bill 102 will close down Leon Pharmacy.

I'm going to have to start by laying off personnel like technicians, followed by pharmacists who assist me to free me up to better help my patients. I'll reduce my business hours to control costs, and finally close my doors to the people, patients and seniors who have known me for all these years.

Leon Pharmacy has been open in Oakville for over 30 years and prides itself on being the oldest independent store standing. Leon is a true independent community pharmacy. I am in a residential neighbourhood. There is no doctor or medical building in walking distance, and my seniors cannot drive a car.

Seniors come to my pharmacy because of the level of service they have come to expect from me, their friend, the only health care professional they can call 10 times a day and who will answer every single question when they call.

I have also with me here a petition signed by our seniors, 304 of them, in one week. If Bill 102 is passed the way it reads and closes me down, it will anger a whole lot of seniors.

I have with me the current financials, enclosed in the package, after running my business for nine long, hard-fought years in a tough industry and business that is a unique blend of health care and retail. As you can see, my revenues have increased 7% from the previous year, bringing my sales to a total of \$3.7 million in 2006. My gross profit, which has the marketing allowances declared, is 24%, which is considered very well below any normal business. Businesses in the food industry like restaurants and Tim Horton's gross 40% and 50%. Is 24% too much that Bill 102 wants to trim some more off? My business's net income after income tax is paid, which will be lost revenue to the government if my business closes because of Bill 102, is \$72,000, or 1.8% return on my investment for sales close to \$4 million. I challenge any investor to put forward \$4 million in sales to get \$72,000 at the end of the year.

Bill 102 forecasts a loss of about \$100,000 to \$150,000 from my business. That puts me at a deficit of over \$75,000 annually. That will force me to close within 12 months of the bill. I will lay off staff worth salaries in excess of \$475,000, or half a million dollars. This staff will end up on unemployment or social assistance, costing the government money.

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I am enclosing in my package actual real financials for six different pharmacies located in different cities in Ontario. None of them can take Bill 102 proposals and stay viable. In fact, I guarantee you, with the new model, they will close—if not in a year, in two.

These pharmacies will affect the care of people in ridings of this very committee: Mr. Qaadri in Etobicoke; Mr. Ramal, we met within London; Mr. Fonseca, Mississauga, in my riding; and Dr. Kular in Gore and Springdale. Even in Rosedale, Hon. Mr. George Smitherman's riding, the very people who voted for him will see a community pharmacy being shut down.

Bill 102 makes sense in recognizing the pharmacist's role as a front-line health care professional. That has been overseen for many years. Hon. Mr. George Smitherman, our Minister of Health, does not want to see us as pill-shovellers. I wish to say to Mr. Smitherman, we are very far from being pill-shovellers.

Bill 102, if passed with the current terms, will force us to reduce staffing, take us away from our customers and become pill-shovellers. Today's community pharmacy is a complete, total package of medical, pharmaceutical, health and business knowledge.

Do not remove the community pharmacist from his role; otherwise, you will see a health system collapsing, and ultimately Ontarians, the very people who voted for you to represent them—your parents, family, kids for generations to come—being the ones to suffer from the consequences of Bill 102.

I am still young. Bill 102 might drive me to seek career opportunities in the States or other provinces. On-

tarians and seniors are the ones who will lose the care they have been getting for free, with no obligation; the love, advice and what is good will be lost. The public will have no one to go to.

Your attention, listening, and the opportunity for me to come today means so much to me and my family—Maggie, my wife; Anthony, my six-year-old son; and Natalie, my four-year-old daughter.

You will be touching the lives of people in your ridings, people who trust you to do everything in your power to make sure they are delivered the very best health care possible from their pharmacist. Thank you very much.

The Chair: Thank you, Mr. Tawfik. We have very limited time, about 20 or 30 seconds. Ms. Witmer.

Mrs. Witmer: I want to thank you for coming today and letting us know first-hand how much it means to you to serve the people in your community. I just want to express my appreciation. What you're doing is absolutely phenomenal. I applaud you and I congratulate you. I hope the government will listen to you.

The Chair: Ms. Martel of the NDP.

Ms. Martel: Thank you very much for your presentation. Can I ask, in terms of the background, would the pharmacy A example be your store?

Mr. Tawfik: That is actually my very store.

Ms. Martel: I want to be clear. Does this include everything in the store?

Mr. Tawfik: Everything in the store; that's my total sales, yes.

Ms. Martel: Okay, so whatever you—

Mr. Tawfik: That's everything.

Ms. Martel: The whole nine yards.

Mr. Tawfik: Even rebates. I declare everything that I get. Whether it be in free goods or marketing allowances, they are declared in my statements. Everything that's on here too, my employees: Those are actual employees I have in my store to serve the people.

The Chair: Thank you, Ms. Martel. To Mr. Fonseca.

Mr. Fonseca: Thank you, Mr. Tawfik, for your care, your presentation, your openness and transparency, and for sharing all this information with us, which will help in terms of moving forward and making this the best piece of legislation possible, and making sure that the sustainability of pharmacists like yourself will be something that we will have today and long into the future in Ontario. That's what we want to make sure happens.

The Chair: Once again, on behalf of the committee, thank you to you, Mr. Tawfik, for your deputation and written submission on behalf of Leon Pharmacy.

HARLEY CLARK

GREG SMITH

The Chair: I invite now our next presenter, Mr. Harley Clark and colleagues. You've seen, Mr. Clark, the protocol for the 10 minutes. I invite you to begin now.

Mr. Harley Clark: Joining me at the table today is Greg Smith. My name, as you have just said, is Harley Clark. I'm a pharmacist. I was first licensed to practise in 1963, so I've been in the business and the profession for quite some time. I was a store owner until February of this year. I owned two stores in Simcoe, Ontario, which were and still are affiliated with the Pharmasave banner. The two gentlemen who purchased the business are with me today. Steve Flexman has been up here earlier, and Greg Smith is the other partner who has purchased the business. I still practise as a staff pharmacist to keep my finger in the business a little bit.

I've also been involved with Pharmasave at board level for the past four years; two years as national director, four years as regional director in Ontario and two as board chair. The experience at the board level of Pharmasave has given me a greater insight into the profession and the business of pharmacy, and to see the need for professionalism in the practice of pharmacy.

In order for optimum health care to occur, there need to be relationships and co-operation between pharmacies, manufacturers, physicians and the balance of the health care team to be able to provide the best health care possible.

During the time of my retirement as a business owner, I was amazed by the number of kind wishes and thank-you notes for my efforts over many years. Many events were long forgotten, and the messages related to how much I had touched their lives at some point in time over the years. This kind of relationship is the norm in independent pharmacy. My knowledge level is not to the degree of the newer graduates, but I do see, when I work on a daily basis, the current generation of extremely knowledgeable pharmacists practise very professionally. The pharmacists' ongoing daily contact with clients demonstrates their real caring about their clients.

Pharmacists are, according to many surveys, the most trusted professionals in day-to-day contacts in our population. The main role of the pharmacist is to provide medication information and advice to their clientele. This is accepted and accomplished by the majority of our profession. However, in order to provide the many and varied services, they must also be businessmen and businesswomen. This is where Bill 102 is going to affect the health care of many Ontarians. If there is not sufficient reimbursement for services, there must be reductions in service levels, staff levels and quite likely some store closures. There must be financial viability for small, independent stores to stay in business.

Bill 102 is a major concern to the viability of pharmacy, particularly the community-based independent pharmacy. Small rural locations where there is only one pharmacy are in jeopardy of closing. The ability to have a pharmacy in a convenient location with a staff that you know and trust and who know you may be gone for many Ontarians. It may be off to the big-box store, who will not get involved with you as a person or really understand your personal health care needs.

The government of Ontario is the major third-party provider for most of Ontario pharmacies and has not had

a fee structure even close to the actual cost of dispensing a prescription for many, many years. In following along with that, many other third-party brokers who sell benefit packages to business have failed to see the advantage of asking pharmacy for assistance in reducing costs in drug management. The solution offered is to cut back the dispensing fee or some other cost, which digs right into the bottom line of the pharmacist.

The Ministry of Health has suggested that there is money available for cognitive pharmacy services. This is a welcomed recognition. The criteria under which it will be distributed have yet to be defined, and it's an unknown benefit. If you divide the number of dollars on the table by 3,000 stores, it doesn't come out to a whole lot of dollars per store. I think that the placing of the cognitive money on the table is a way to say that you're recognizing our services, but it's not going to be a great financial benefit.

Pharmacy can offer many services to assist in medication compliance and proper medication utilization, such as one-on-one consultations, seminars and clinics, in addition to daily counselling on new and ongoing medications. Our clients repeatedly tell us that the pharmacist is the primary source of medication information; the physician just doesn't have time to do that anymore.

Proper medication management leads to better overall health care and major reductions in health care costs to hospitals, physicians, home care and many other integrated health services also paid by the Ontario taxpayer through the Ministry of Health.

It has been stated many times that a significant number of emergency room clients are there because of drug management problems. This is where pharmacy, if they cut back their services, will not be able to carry on in that area to the same degree that they do now.

As I mentioned earlier, it is encouraging to know that there may be some monies available for cognitive services. The money is nice, but the recognition that the pharmacist is really part of the health care team is more significant.

Medications today are as complex as they are expensive. Therefore, the need for better understanding of medication is ever-growing. The pharmacist needs to be reimbursed according to the value of the service rendered. If Bill 102 is approved as written, the level of service most desirable may not be affordable and thus not available.

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Our business in Simcoe was able to thrive because we saw the ongoing pressure on the profitability of just filling prescriptions. We identified market niches in which we could grow the business, such as home care contracts with CCACs, specialty compounding and adding natural health consultants to our staff.

However, there are many small dispensary-only independent pharmacies that do not have the luxury of niche market business to supplement prescription profit. These are the stores that may not survive. I do not fault the ministry for trying to contain medication costs, but I do

not condone the primary thrust of trying to control costs by drastically reducing the income of pharmacists.

I've heard comments over the past few days that the changes will be revenue neutral for pharmacy, but this is rather hard to believe when the significant changes, such as allowance eliminations and markup percentage decrease, reduce income, and minor changes—a very small fee increase and cognitive services payment with no criteria—increase revenue. I applaud the increase in fee structure, but I maintain that the recommended figure is too little, too late, and still far below the average dispensing fee in Ontario.

The reduction of the markup from 10% to 8% is a bottom line profit reduction, and again, no criteria have been specified. The only area I might concede is a reduction of rebate dollars to be negotiated through the OPA, provided that there are other new areas of revenue as part of the package. However, the pharmaceutical industry must be allowed to invest in pharmacy to some degree to allow some of our services to continue.

One essential point I would like to make is to specify ongoing mandatory procedures for the Ministry and OPA to work together to provide excellent health care at reasonable cost and reasonable return to the pharmacy. This aspect must be written into Bill 102. The wording should also contain the exact powers of this committee.

That's all I have. I would like to thank you for your attention today, and I look forward to a resolution that will be beneficial, firstly, to Ontario health care recipients and taxpayers, and also to the Ministry of Health and to pharmacy as other partners in this whole process of negotiation.

The Chair: Thank you, Mr. Clark. Thirty seconds per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you very much for pointing out that the changes will not be revenue neutral. You pointed out that the \$50 million might be to 3,000 stores, but there are going to be two or three pharmacists in some of the stores, so the pie is even smaller, isn't it? Can you give us an idea of what we're looking at in terms of how many pharmacists and what the maximum might be that they receive?

Mr. Greg Smith: We calculated about \$17,000 per store, which is what would come back in cognitive services if you divide the \$50 million by 3,000 stores. That's just a rough number; it could be even less.

Ms. Martel: And you have three pharmacists in there.

Mr. Smith: Yes.

The Chair: Thank you, Ms. Martel. To the government side: Ms. Wynne.

Ms. Wynne: Thanks for being here. So you are happy about the symbolic recognition of pharmacists with the cognitive fees, but you're arguing that they're not high enough. Can I ask a question about the OPA recommendations? Have you seen them? Do you support the code of conduct—some of those issues?

Mr. Clark: I think the OPA recommendations certainly recognize the role that pharmacy plays in the health care system, and I think that's the most important

part of what is coming out of the OPA recommendations and the part—

Ms. Wynne: And what are the services you provide as—

The Chair: With apologies, I have to intervene, Ms. Wynne. Ms. Witmer of the PC Party.

Mrs. Witmer: In 30 seconds, I think all I can say is, thank you very much for a very comprehensive presentation. I hope that the government will respond to the concerns and recommendations you've made.

The Chair: Thank you, Ms. Witmer, and thanks to you as well, gentlemen, particularly to Mr. Clark for your presence and deputation.

MAIN DRUG MART

The Chair: On behalf of the committee, I now invite our next presenter, Mr. Maher Hanna, vice-president of Main Drug Mart, and colleagues. As you've seen, Mr. Hanna, the protocol is that you have 10 minutes to make your deputation. Time remaining will be rigorously distributed among the parties for questions or comments. Please begin.

Mr. Maher Hanna: Thank you. I have with me Mr. Amal Gendi, our executive director.

Mr. Chair and honourable committee members, my name is Maher Hanna, and I'm here to represent Main Drug Mart pharmacies.

By now, and after hearing presentations from other Ontario pharmacists, I'm sure that the committee has formulated a clear idea about the risk involved if Bill 102 is passed through legislation without any amendments. Although I am a pharmacist and a pharmacy owner, I'm speaking today in front of this committee as a concerned citizen who cares about my fellow citizens who are forming the community of Ontarians. I understand that democracy brought me here to express my concern, and I also understand that the same democracy—and I mean true democracy—is able to amend any given bill or proposal, even if it is dictated by the party in power.

We all understand that the honourable Minister of Health is facing a shortfall in his budget. We also understand that in order to resolve this problem, he might have one of the following options to choose from:

- to come up with enough funds either from his government or from the federal government;

- to face the people of Ontario with cuts in health services at a time when more services are needed as our population ages;

- to switch his problem to other honourable ministers, such as the Minister of Finance in the form of lost revenues via taxes; the Minister of Labour and human resources in the form of layoffs and collection of EI benefits; the Minister of Community and Social Services by forcing workers who lose their jobs to collect social assistance payments; and a few others.

The honourable minister has chosen the third option. This option appears easy to be sold to some people who

do not know anything about the economy of a drugstore and its economic effect on the whole community.

Bill 102 will not only affect Ontarians at the pharmacy level with regard to less services provided and less accessibility, particularly in rural communities, as you have heard from my colleagues in previous presentations; it will also affect the whole pharmaceutical industry. In addition, it will have a negative spillover effect on the Ministry of Finance and will definitely place more strain on our social programs. As I explained earlier, Bill 102 will result in lost revenues for the Ministry of Finance with less corporate, business, property and personal taxes collected. Bill 102 will result in layoff of pharmacy staff, who will collect EI and might end up forced to collect social assistance payments.

Mr. Smitherman is looking at saving \$250 million for the Ministry of Health. Has he consulted with the finance minister how much of a burden he's just shifting from one ministry to the other? Has he calculated the lost revenue in taxes from all these people losing their jobs? Has he also factored in that these people will not only stop paying taxes, but will also start collecting employment insurance and social assistance if they do not end up finding jobs?

Pharmacists are the most accessible health care providers in Ontario. We provide front-line health care to thousands of citizens every day, with no direct remuneration from the Ministry of Health. Bill 102 will result in closing pharmacies and placing more strain on our hospital emergency rooms and increasing patient waiting times in these facilities. Has the Minister of Health calculated how much this will cost his own ministry?

Accordingly, I'm resting my case and ask for reconsideration of the following: the honourable government to redo the math, if their real intention is providing transparency to their proposed bill—transparency means fairness also; to recognize the generic rebates as part of the economical pillars to our business in order to keep its sustainability.

Yesterday's announcement to fix the capping of \$25 is strong evidence that the government has started to recognize that the whole bill should be totally revised and fixed. I really appreciate that the government has the courage to reconsider, not only the capping but also the generic allowances.

Thank you for giving me such an opportunity to speak in front of you. I'm open to any questions.

The Chair: Thank you, Mr. Hanna. We'll begin with the government side.

1150

Mr. Ramal: Thank you very much, Mr. Hanna, for your presentation. You started correctly at the beginning, this format about listening to pharmacists and stakeholders in order to make changes and amendments to basically suit the whole atmosphere of the bill.

You mentioned a lot of things. I want to assure you, Mr. Hanna, that this bill was introduced in order to correct and transform the drug situation in Ontario. It was not about raising money or collecting money for the

Minister of Finance. That's one. Plus, the money from this transformation of the drug situation in Ontario would be reinvested in listing more drugs and enhancing other drugs to suit the many clients across the province. That's the intent of the bill. And that's also why we're here today, to listen to you and to others in order to see your concerns, and as a great example of what's happened—

Mr. Hanna: But it will not save money for the government, because the government will lose money in other revenues, and hospital wait times will be longer. When you come to your pharmacist and ask for advice on a simple ailment, the pharmacist helps. If you have to go to a hospital or a doctor's office for a simple cold or a simple diagnosis, then—

The Chair: Thank you, Dr. Ramal, and thank you, with apologies, Mr. Hanna.

Mr. Hanna: No problem.

The Chair: Now to the PC side. Ms. Witmer, about 90 seconds.

Mrs. Witmer: Thank you very much for your presentation. I think you've demonstrated that it's simply not possible to cut hundreds of millions of dollars from the budget without some very severe consequences on patients, and obviously on pharmacists as well. You're simply not going to be able to maintain or increase the level of service that you provide.

You've indicated that the government has made a good first step: They've removed the cap of \$25. But I guess the other big issue really is the generic allowance. Would you be amenable to that being reinstated in some form and, as opposed to calling it a rebate—and up until now, it's not been all that transparent—having something that would be called a professional allowance or educational or whatever, and having some sort of code of conduct where the government could clearly track the rebates coming from the companies, as well as the amount of any rebate that would be flowing to the pharmacists? Would you be agreeable to something like that happening?

Mr. Hanna: Definitely. We understand that the transparency has to be fair for both sides. We would like to keep all of these allowances open to everyone, as long as they are not capped at a certain percentage or level, because each store has different requirements and a different level of allowance that they require for sustainability and continuing to serve the community.

The Chair: I offer the floor now to the NDP.

Ms. Martel: Thank you for your presentation. Let me just follow up on something Mr. Ramal said, which was to say to you that the government, with its savings, is going to reinvest in more drugs for more people—I'm just paraphrasing. I have a couple of points in that regard. I agree with you that a lot of community pharmacists are going to go down, so we're not going to have any savings. Even if we did—let's just say we might—the government has said they project \$289 million worth of savings for reinvestment. It's interesting that the government hasn't provided any background papers as to how they arrive at these savings. In fact, one of the points

they raised, that the feds are going to start paying for their own employees and we're going to save \$67 million, is not even in place yet. So it would be really interesting to see the background.

Finally, there's nothing in the bill—not a provision; not one anywhere—that says any savings that are found are going to be invested in the drug benefit program. Nothing; no provision in the bill guarantees that. So if there are savings, you can bet they're going into the consolidated revenue fund, not back into the drug program.

Do you have an idea of how this bill is going to impact on your store particularly? Have you run the calculations?

Mr. Hanna: I'll let Amal do that.

Mr. Amal Gendi: Actually, a high school graduate can do the simple math, but our economy—

Ms. Martel: My math was never good, so go through it with me.

Mr. Gendi: Okay. If you calculate the gross revenue minus the actual cost, you will definitely get to the negative bottom line without any allowances, and that allowance is the only thing that has kept our stores sustainable in the last more than 17 years.

The Chair: Thank you, Mr. Hanna and your colleague, for your deputation and presence on behalf of Main Drug Mart.

AXIS VILLAGE COURT PHARMACY

The Chair: On behalf of the committee, I would now invite our next presenters, Mr. Amin Shivji, owner of Axis Village Court Pharmacy. Welcome. Please be seated. As you've seen the protocol, you'll have 10 minutes in which to make your presentation. I would invite any colleagues of yours to please identify themselves for record-keeping purposes, for the permanent record here at Hansard.

Dr. Amin Shivji: I'd like to introduce my colleagues and independent pharmacists Munir Dharamshi, Karim Mamdani and Shahinur Visram. My name is Dr. Amin Shivji. I am the pharmacist owner of Axis Village Court Pharmacy in Haliburton. Haliburton is a beautiful area that has among the highest number of senior retirees per capita in Ontario. It will therefore come as no surprise to you when I say that well over 50% of my clientele is made up of seniors. Bill 102, as proposed, has very little that I can claim to be positive to my pharmacy.

Every one of us in this room today is aware that anyone can walk in off the street, into a pharmacy, speak to the pharmacist, receive advice, and leave without any obligation to make a purchase, let alone pay for the service. Not many other professions in the world, if any, provide this level of service of care to their clients, and no one is prepared to provide any service without appropriate reimbursement. I provide this high level of service, but it is about to change with Bill 102.

Ladies and gentlemen, I grew up in Kenya, the first son of a Third World farmer with limited income. When anyone in my family had health concerns, my parents

sought the advice of a local pharmacist. In many cases, the problem was solved without the expense of moving up the health care chain.

Like my pharmacist from many years back, today I am available to patients without appointments, patients who are seeking advice, who may be having trouble with their medications, issues that can often be resolved quickly before they escalate or cost the health care system unnecessarily. This is about to change.

Bill 102 is telling me that my government no longer wants me to provide my patients with this service. If I cannot provide this basic service, how does the government expect me to provide high-level, time-consuming cognitive services to save my diabetic patients?

Community pharmacy is unique insofar as it provides professional health care in a retail setting. We are all aware that promotional allowances and rebates are normal business practice in the retail sector. Community pharmacy has come to incorporate promotional allowances and rebates into their business model, largely because of the unfair treatment it has suffered at the hands of third-party payers.

The dispensing fee is perhaps the most abused portion of the reimbursement model by government. Every time a government has sought to contain drug costs, it has treated community pharmacy indiscriminately. Independent pharmacy owners like myself have been the most adversely affected.

Twenty years ago, the cost of dispensing a single prescription was calculated at \$6.71. The ODB fee was \$6.22. Today the cost of dispensing one prescription with a 25% profit is calculated as \$11.28. The ODB fee is \$6.54.

Neither the current fee nor the anticipated increase is anywhere near the raw cost of dispensing, let alone allowing for generation of profit. As the cost of living goes up, so too must the wages I pay my staff. Occupancy costs go up, and of course the costs of drugs have gone up. Successive governments have failed to deal with the manufacturers' price increases. Once again, I have been penalized, this time due to the erosion of the existing 10% markup as a result of the price increases.

Bill 102 proposes to allow a markup of 8%. If pharmacies are expected to pay the wholesaler up-charge from this 8% markup, the true markup will end up being in the neighbourhood of 2%. What other retailer is forced by government to operate under these conditions?

If the government aims to reduce rebates, I will require that the loss in income be made up through appropriate, fair and honest markup provisions and a dispensing fee that reflects the true cost of doing business in 2006. My government must also guarantee that these will be adjusted in a timely manner to reflect cost increases. With the continued demographic shift, escalation in the total drug bill is inevitable. Unlike in the past, I as a pharmacist-owner must be assured that any attempt to reduce the cost will not once again be done at my expense.

1200

Much is being made of the fact that the government is putting aside \$50 million to pay for additional services. One is given the impression that this additional funding will offset some of the loss in revenue through promotional allowances or rebates. While this additional funding is welcome, it must be put into context. This funding is for new responsibilities and new services. Finally, a government has come to understand that pharmacists in the community can play a pivotal role in helping provide Ontarians with exceptional health care services. Pharmacists find nothing new in this. To provide these services, however, I will incur new costs. Not only does this bill fail to recognize that, but it also does not provide for a legislated mechanism of reimbursement for these new services. It has chosen instead to remain ambiguous about the mechanism. Furthermore, it fails to recognize that the daily dispensing function I provide today must be viable before I am able to put into practice the processes that will be required to attain any portion of this new funding.

It is important to understand that loss of revenue from one function, that of daily dispensing as we know it today, cannot be made up in whole or in part by another, namely cognitive services, which in itself will incur new costs. If I am driven out of business because I cannot afford to dispense prescriptions, I will not be able to provide cognitive services, no matter how much the government is prepared to pay for such services.

Over the last five years, I have worked hard to put into place the pieces I will require to provide these services to my patients. I have gradually remodelled my pharmacy to provide the physical requirements, and employed additional pharmacists and dispensary technicians to allow appointment-based services. I have done so even though my current volume does not warrant it. I have done so because I believe that I as a pharmacist can do more, much more, than dispense prescriptions. Bill 102 will force me to undo most of this simply to stay in business. I will have to reduce my staff numbers. I will have to reduce expenses by reducing my service levels. I will be in no position to add the new patient care responsibilities, the only positive thing talked about in this bill.

The government talks about transparency. I have no problem with that, but I do expect my government to be similarly transparent in its actions. The ambiguity and lack of clarity within the bill show anything but transparency.

The Chair: Thank you, Dr. Shivji. We have 30 seconds or so per side, beginning with the PC, Ms. Witmer.

Mrs. Witmer: Thank you very much for an excellent presentation. Do you have a copy of your presentation?

Dr. Shivji: I can leave mine behind.

Mrs. Witmer: Okay, that's great.

You have really hit upon some of the failings of this bill: the fact there isn't transparency; the fact there isn't any clarity; the fact that this recognition of these new services is great, but there are going to be additional costs

incurred. Obviously, there's no mechanism to ensure that you are properly reimbursed.

How greatly do you—

The Chair: With apologies, Ms. Witmer, I will have to intervene and give the floor now to Ms. Martel, the NDP.

Ms. Martel: Thank you for your presentation. Thank you for your comments about transparency, because it is so clear that so much of what the government actually promised doesn't even make its way into the bill in any way, shape or form. I don't want to go by a promise or a government announcement. I'd like to see the details in the bill, and they should be in the bill for the benefit of those who are going to be affected.

Can you tell me about the cost to you for new services with respect to offering cognitive services?

Dr. Shivji: Right off the bat, it's pharmacists' time. That is my single priority. I have to have somebody available to provide that service. So you take that time and you multiply it by the time it—

The Chair: Thank you, Ms. Martel. Mr. Peterson.

Mr. Peterson: Are you a medical doctor?

Dr. Shivji: No, I am a PhD in pharmaceutical sciences.

Mr. Peterson: Thank you for your presentation. We are listening. It is the intention of this government to work with the OPA and yourselves to make you front-line care providers in Ontario. That's why we're looking at making the 8% markup a guaranteed markup, not eroded by prices as it has been in the past.

Dr. Shivji: I'm glad to hear that.

Mr. Peterson: That's why we're increasing the dispensing fee. That's why we're also looking at a cognitive fee, and we'll work with you to define that and we look forward to you giving us suggestions on what that cognitive fee should cover. We're also looking at the education amounts—

The Chair: Thank you, Mr. Peterson. On behalf of the committee, thank you to Ms. Visram, Dr. Shivji, Mr. Dharamshi and Mr. Mamdani, for your presentation. As was asked, please feel free to leave any written materials to our committee clerk, Mr. Day. Thank you for your presence.

TINA PERLMAN

JIM SEMCHISM

The Chair: I'd now like to invite, on behalf of the committee, Ms. Tina Perlman and Jim Semchism. As you've seen the protocol, you have 10 minutes in which to make your presentation. Please begin.

Ms. Tina Perlman: Good morning. My name is Tina Perlman. With me is my colleague and friend Jim Semchism. We're both from London, Ontario. I'm currently a member on the board of the Ontario Pharmacists' Association, and I am an independent pharmacist, practising in a variety of community settings, independent and chain pharmacies, as well as an outpatient hospital

pharmacy. Jim is the pharmacist-owner of Ealing Pharmacy, a neighbourhood community pharmacy in London.

Jim and I have served for many years on the executive of the London and District Pharmacists' Association, and we feel that the issues and concerns regarding Bill 102 that we bring forward today are representative of those of our colleagues in the London area. We thank you for this opportunity to present to you today. Both Jim and I have been members of the OPA since we graduated from university—Jim a little bit before me. We are full supporters of the association as our exclusive and official voice.

The board of OPA is comprised equally of independent and chain pharmacists, with representation from the Ontario Chain Drug Store Association and the Canadian Society of Hospital Pharmacists. By virtue of this composition and its over 7,000 members, OPA is truly representative of all pharmacists and pharmacies in Ontario.

In several provinces in the country, the professional pharmacy associations are recognized in legislation or in regulations as the official negotiating body.

We urge the committee to recommend an amendment to Bill 102 that recognizes OPA as the exclusive negotiating body for pharmacists in Ontario.

All components of pharmacists' reimbursement for traditional services, such as dispensing fees, markups and costs, should be determined through negotiation with OPA. We need to ensure that OPA is involved in the development of a fair and viable reimbursement model for all pharmacies in Ontario for the short and long term.

We commend the minister for acknowledging the value of pharmacists as front-line health care providers and for his intention to reimburse pharmacists for medication management services.

We strongly encourage the establishment of a pharmacy council in Bill 102 that will assist the ministry in defining these professional services, developing a fee code and determining the policy, process and implementation of these services.

We support OPA's proposal that the pharmacy council be co-chaired by OPA and the ministry. The inclusion of a pharmacy council in the legislation to provide expert advice to the ministry will send a very positive message to all pharmacists that the government is serious about the involvement of pharmacy in the development of drug and health policy in Ontario for years to come.

Earlier this morning, you heard from OPA and their proposed amendments to the bill. We believe that the approach OPA has taken permits the sustainability of pharmacy, allowing patients continued access to the valuable services pharmacists provide each and every day in every community in Ontario, services that result in dollar savings in other areas of the health care system, partly by keeping them out of emergency departments, urgent care departments and doctors' offices.

At the same time, OPA's proposed amendments also ensure that the goals of the ministry are achieved. In the end, pharmacists, like the ministry, are committed to

improving patient care, and if we can work together, we are more likely to be successful. We urge you to consider and accept OPA's amendments and make Bill 102 workable for all.

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Mr. Jim Semchism: I've been a community pharmacist-owner in London, Ontario, for the past 24 years. My practice was opened in 1952 by my father. Nine members of my immediate family are practising pharmacists. Our practices include independent pharmacies, corporate stores and a hospital outpatient pharmacy. Currently, I am the chair of a 29-store, independent buying group in the London area.

I'd like to thank Minister Smitherman for announcing the removal the \$25 markup proposed in the initial draft of the legislation. Pharmacists have pointed out the negative economic consequences of this proposal and the minister has listened and acted wisely on the profession's advice.

Within 24 hours of Minister Smitherman's announcement of Bill 102 in the House, an aura of doom seemed to overcome most pharmacist-owners within this province. We feared for our survival. Many of the buying group members felt that their retirement nest egg, their business, had been greatly depreciated.

Yesterday and today, you heard from pharmacists about the economic impact of the bill. My practice and those of my family and business colleagues are no different. Removing industry generic allowances puts us all in the red. Without them, none of us can launch the innovative cognitive services that the minister proposes to fund. None of us can make a profit today if you remove that generic funding from our current businesses, when one takes into mind the low remuneration we receive from the Ontario drug benefit plan for prescriptions on the ODB. The removal of the generic funding, compounded with the reduction in markup, will result in my business losing several hundred thousand dollars annually.

I believe that the Drug System Secretariat has significantly underestimated the value of these rebates. Within our group, the average generic rebate amounts to about \$180,000 per store per year. This funding supports the wages of professional staff, the education of this staff and the provision of special services to our patients.

My own business has funded the education of a pharmacist as a diabetes educator, a pharmacist as an asthma educator and the training of a pharmacist to monitor and train patients in using blood coagulation devices. We've funded pharmacy students for the past five summers, and this summer we have taken on a pharmacy intern for four months.

Our pharmacists have attended continuing education programs put on by provincial and national pharmacy conferences over the last 25 years. On Friday, two of our staff will be flying to Edmonton to attend the national conference.

Rebates also cover renovations to our dispensaries. Two years ago, my practice doubled the size of the

dispensary, enhancing our efficiencies, allowing us to provide more physical space for the services that the minister expects us to provide.

Generic funding also allows us to provide prescription delivery service, which allows seniors and those patients who are non-ambulatory to receive their medication without coming directly to the store.

My own business serves a multicultural population. I have tried to hire staff who speak a variety of languages. Currently, we have staff members who speak Portuguese, Greek and Italian fluently, and this helps us in our communication with members of these ethnic groups.

In regard to the markup reduction from 10% to 8%, today, 95% of purchases are from wholesale. When the 10% markup was put into place in the mid-1980s, 70% of dispensary purchases were direct from the manufacturer. This has changed dramatically. I believe that the effective markup that pharmacy is receiving today is approximately 4%. This is because the ministry has left prices at 1997 levels, totally eliminating the 10% on over 700 drugs that we commonly dispense. Also, the brand name industry has forced us to depend on wholesale distribution in their practices in recent years.

A 2% markup cut will not be helpful to pharmacy. Even if the legislation eliminates the cost to operator claims, our dependence on wholesale up-charges at the 5% level probably nets us down to 3%, which is less than the 4% we are currently at today.

The markup reduction, from my perspective, is negative. I've tried to calculate it out within my own business as being approximately \$25,000 annually. If my pharmacy loses \$280,000 a year in generic rebates, plus a \$25,000 reduction because of the 2% clawback on the reduction of the markup, I estimate that my losses off my gross profit will approximate \$300,000.

If we look at the dispensing fee increase that is proposed, the 46 cents, I currently fill 27,000 prescriptions, and you can see that it does not come near to accommodating the loss caused by the impact of the other two issues. My estimate is a loss in my own business of approximately \$290,000. If the minister was serious about allowing the 20% education allowance funding, the loss still remains significant at over \$200,000.

Many of my colleagues are very concerned about the potential of a ministry rollback in generic prices. This, again, would have a significant impact on pharmacies' viability.

One last point worth considering is that if one calculates the amount of generic prescriptions that are filled in the marketplace today, one comes up with a number of 45% of the prescriptions. But if you look at the actual dollars that are spent on prescriptions, the generic dollars amount to only 17%.

In conclusion, the 29 pharmacist-owners in the buying group that I chair feel that Bill 102, as proposed, will wipe out the inherent value of our businesses. I have worked for 30 years at my practice providing health care services in southeast London. Today, like my colleagues,

I feel that my business has potentially lost much of its value if the legislation moves forward as proposed.

The Chair: I will have to intervene there. I would like to thank you, Ms. Perlman and Mr. Semchism, on behalf of the committee for your deputation and presentation today.

I would also like to advise all my colleagues that we will be recessed, but we will be resuming immediately following question period, not after orders of the day petitions.

This committee stands recessed. Thank you.

The committee recessed from 1216 to 1532.

CANADIAN ORGANIZATION FOR RARE DISORDERS

The Chair: Ladies and gentlemen, on behalf of all members of the committee, I will welcome you and call this committee back into session. As you know, we're here to deliberate on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act.

I will now call, on behalf of the committee, our first presenter, Mr. John Adams, treasurer of the Canadian Organization for Rare Disorders. I remind all interested parties that we have a very strict 10-minute rule and that we have more than 100 presenters coming before the committee. I would invite you, Mr. Adams, to begin now.

Mr. John Adams: My organization, CORD, is a national charity focused on providing information, support and advocacy for Canadians who live with a rare disorder.

What is a rare disorder? We don't have a definition of a rare disorder in Ontario, in this bill or anywhere in Canada, unlike Europe, Japan, Australia or the United States. The European Union's definition of a rare disorder is a health condition affecting one person in 2,000 or fewer, and the European definition of an ultra-rare disorder affects one person in 100,000 or fewer.

There are more than 8,000 conditions which meet that European definition, so collectively the known rare disorders affect many, many people here in Ontario and across Canada. For most rare disorders, unfortunately, there are no treatments yet, so a driving commitment to research and to quick access to clinical trials and breakthrough treatments are key issues for us. Overall, CORD supports the need for improvements in Ontario's public drug program.

I was in this very same hearing room last September on behalf of CORD to help inform and educate MPPs about the case for expanded screening for newborns for rare disorders. That hearing was a lowly private member's bill, and each presenter was given 20 minutes. In my view, it is a crying shame that citizens petitioning their elected representatives today for changes in this powerful government are restricted to a mere 10 minutes. While this committee will hear something like 100 presenters, it is a shame that more than 200 individuals and organizations who asked to speak are denied access to

this process by the use of time allocation or closure. This is not a sterling example of local democracy working well.

Last summer the Ontario Ombudsman described newborn screening in Ontario as being like "Third World conditions." That's a quote. Mr. Marin was 100% accurate, and his report helped the Ontario government understand that dramatic changes were needed.

The lesson of newborn screening in 2005 is that it took a strong commitment from the Minister of Health to overcome inertia and silo-minded advice. It took the government three tries before it got mostly right the case of expanded newborn screening. Last July, for example, the plan was to expand from three to eight disorders. Once the Ombudsman levelled his criticisms, the plan was to include 22.

There are MPPs here today who were present last September and they remember the outrage from citizens when the announced plans to expand newborn screening did not include sickle cell diseases. Thankfully, the government came to its senses on that issue—

Mr. Ramal: We did.

Mr. Adams: Yes, you did—no, you haven't done it yet. July 1, right? George Smitherman did revise the plan, and we will begin screening all babies in Ontario for sickle cell on the first of July, and also have the public intent to screen all babies for 28 disorders by the end of this year. But we are waiting for cystic fibrosis to be included, as it is in Australia, Mississippi, New York state, North Dakota and the Calgary health region, to name a few jurisdictions.

Skepticism about the new rhetoric of citizen participation accompanying this Bill 102 is understandable when we see no citizen participation in the new advisory committee on newborn screening. I submit to you that the Ombudsman's description of "Third World conditions" applies equally to other aspects of dealing with rare disorders. Unlike the Americans and the Europeans, we have no focus on rare disorders in terms of government funding for research or market incentives to discover and develop what are called the orphan drugs for rare disorders. CORD asks all governments in Canada to work on a national strategy for these orphan drugs.

The Americans and the Europeans have public policies and programs which recognize that it's difficult and expensive to discover and prove the safety and efficacy of new treatments for previously untreatable rare disorders. There is a lack of a coherent federal and provincial strategy for rare disorders that has a profound burden on Canadians with rare disorders. We are, unfortunately, increasingly the last people in the developed world to get access to new breakthrough therapies for untreatable conditions. This is one of the wait lists that we should be measuring and reporting.

I believe that Tommy Douglas, the political father of medicare, or public health insurance, is rolling over in his grave over the distortion of his ideas. Public health insurance at its core is not about covering every expense. It was created to protect families from catastrophic expenses if you had the bad luck to need major help. It is

foremost about pooling the risks of catastrophic health costs so no one is denied necessary medical services because of their personal finances, or is forced to rely upon the vagaries of private charity, as happened to Mr. Douglas as a boy.

When I was nine years old, my mother was going to die because of a serious heart condition. She was the fourth person in Canada to have open heart surgery and is the only person I know to have open heart surgery three times. Each operation and convalescence would have bankrupted our family.

When Mr. Douglas launched medicare in Canada, its scope was limited to doctor and hospital services. It did not and does not cover prescription drugs, which were few and far between in the 1950s and 1960s compared to today. Thank heavens that medical treatments have improved dramatically.

CORD supports and wants to reinforce the need for rapid review for new drugs for life-threatening or serious disease for which no other treatment or effective drug therapy exists, or which represents a significant improvement in terms of efficacy or reducing side effects. We ask for a definition of breakthrough drugs and a definition of decision-making criteria for rapid review of breakthrough drugs to be added to this legislation.

These breakthrough drugs will be expensive, and the impact on saving lives and the quality of life of patients for those without any other treatments must be evaluated on humanitarian grounds and not just on cost. And I am aware that there are some informal discussions and there seems to be light at the end of that particular tunnel, although it may appear in the form of draft regulations rather than the statute. But I would hope that the committee might exercise its political oversight and encourage the decision-making criteria for rapid access, rapid review, to be included in the legislation. That would give it the highest profile and the highest legal certainty.

1540

We are waiting for Ontario to fulfill its promise made last year to provide rapid access to breakthrough therapies for two life-threatening rare disorders: Fabry and MPS I. There is also the additional case of a 5-year-old boy with MPS VI which is on the minister's desk.

CORD joins with other patient organizations to ask for more time and more consultation on this legislation and the draft regulations to come. While we did participate in the previous useful consultations with ministry staff as the drug secretariat was considering policy, there has been far too little time to digest the full significance of the actual legislation.

CORD, like others, is concerned about the language in Bill 102 setting the stage for therapeutic substitution. We ask for a review process for decisions by the executive officer with proper accountability.

Thank you very much.

The Chair: Thank you, Mr. Adams. We have about 30 seconds per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Given the time, I think I'll just make a comment. I'm concerned about citizen participation, be-

cause I see that the citizens' committee is not anywhere in the legislation. I'm concerned about the promise for a rapid review, because there's nothing in the bill about that, nor is there anything in the bill about what new process will replace the section 8 process. There isn't anything about breakthrough drugs. Finally, I'm worried about treatment being considered with respect to economic evidence, because it clearly says on page 6 of the bill, "Funding decisions for drugs are to be made on the best clinical and economic evidence available," and many people think that's why so many of the cancer drugs haven't been funded.

Mr. Adams: Please change that section.

The Chair: Thank you, Ms. Martel. We'll offer it to the government side.

Mr. Peterson: Our consultations have been undertaken over a year, and we've done extensive consultation with all kinds of different interest groups. If you don't feel you've been properly consulted, I look forward to receiving any other information you have on what areas you think we're missing in this. If you could briefly tell us what you think those areas are at this point in time, I'm here to listen.

Mr. Adams: The most important thing for the rare disorder community is that the criteria for decision-making around rapid review to access to breakthrough drugs include quality-of-life considerations.

The Chair: Thank you, Mr. Peterson. Mr. Jackson of the PC Party.

Mr. Jackson: Thank you very much. Welcome, John. I appreciate your brief. Are you concerned that the government has acted—if we just take the microscope up, the government says they're going to do all this and they're going to save \$300 million, maybe half a billion dollars. I'm struggling with the notion—just a general question: How do we expect to get so many more new leading-edge drugs when all the evidence is clear that we are so far behind other jurisdictions across Canada? I'm not just talking about cancer. That's the one I'm completely familiar with. You bring to the table a whole series of other drugs. Would you like to comment on that?

Mr. Adams: We need to be spending more on effective drug therapies, not less—that's it in a nutshell—because there are so many breakthroughs now and Ontario residents with rare disorders are usually behind Bulgarians in terms of getting access to those new therapies.

The Chair: Thank you, Mr. Jackson, and thank you, Mr. Adams, for your deputation on behalf of the Canadian Organization for Rare Disorders.

WALSH'S PHARMACY

The Chair: I will now call on behalf of the committee Mr. Joseph Walsh, owner of Walsh's Pharmacy. Mr. Walsh, you've seen the protocol. You'll have 10 minutes in which to make your complete address. Any time remaining will be distributed evenly among the parties for questions and comments. Your time begins now.

Mr. Joseph Walsh: Honourable members of the committee, I come before you not as a corporation or association but as the sole owner of an independent pharmacy. Bill 102 will put me out of business. Let me repeat this: Bill 102 will put me out of business, the way it is written.

My father started my pharmacy over 50 years ago in a small town of 2,500 people. He worked hard to create a business that was community-oriented and successful. I know this because I worked there and started from the bottom of the proverbial ladder as a garbage boy. My brothers and sisters all worked in the family business, which gave us a sense of community and pride in our work, which has helped us forge our own careers. Mine was to follow in my father's footsteps. I saw how he helped people and took great pride in his business and his community and this inspired me. I took over the business in 1992 and I've carried on the dream of providing our small community with all the services and products that the bigger centres take for granted, plus that little extra that we're known for that helps small communities.

We call our pharmacy Walsh's Pharmacy because we are proud of what we have accomplished and want to let people know that we own this business. We take pride in calling this a family practice pharmacy, a play on words. Our family—literally, my wife, son and daughter—all work there now, and we look after our patients' families, from being born right through to home care for seniors.

Our store of 3,500 square feet gives jobs to 14 people. If Bill 102 goes through, 14 people will be out of work because we will be out of business. Let me repeat: 14 people will be out of work. Multiply this by approximately 3,000 pharmacies and the numbers rise very quickly.

How is Bill 102 going to put me out of business? Increasing the fee to \$7 is a joke and an insult for what we do for the government in health care. The fee, when the drug benefit was created, was not much lower than this, and what can you get now that you could get 30 years ago? The OPA fee guide states that we should be doing 12 prescriptions per hour, from greeting the customer to counselling at the end of the session. At \$120 an hour, that is \$10 per prescription, with a 2% increase yearly which is not negotiable. Ninety-day supplies should be only listed on low side-effect medicines. With all other medicines, it should be 30 days only.

Price erosion: Name another business that has a third party dictate the cost to get the product in, what you can sell it for, what your fee is to do this, have a minimum requirement of what you have to do to get paid, and then you have to put the cost and your profit, which are theoretical, on the price tag, which is the receipt we give to the patient, which is mandatory. I cannot think of any other business like this except for pharmacy under drug benefit. I've put an example on the sheet you have there of medicine with cost erosion. I'm not picking on Lipitor and Pfizer but it just came into my head. With this medicine you can see that at the end of it I'm losing over \$10. I get \$6.54 from drug benefit. How I'm losing money is not rocket science.

Why is there price erosion? Because the price has been fixed for as long as I've been a pharmacist: 15 years. Pharmaceutical companies are allowed to increase the price but we're not able to charge the patient the difference, so the pharmacy absorbs the difference in the cost. When I started, there were approximately 10 products. Now, 15 years later, I believe it's pushing 300 pharmaceutical items that fall into this category.

Bill 102 wants to cap the markup at \$25. I just got a fax yesterday that this has been taken back, but just to add to this, the 10% that's marked up now is out of date as well. Most management studies show that it's 12% to keep a product in stock. If I have a \$1,500 cancer medicine for a patient, it's going to cost me more than 10% to keep it in stock for that patient. Bill 102 wants it to be 8%, but do we know if that is after the price erosions have been corrected or before? As far as I know, OPA and no one else knows this yet.

Interchangeability: We have the best health care system in the world. Why are we messing with it? We need a non-partisan third party to decide, after thorough testing, if a medicine is the same or similar, depending on which word you want to use, because both have been used in the information I've gotten. Not a single person, just to speed up the process, should have this power. I put my reputation on the line in a small community when I tell a patient, "This medicine is the same medicine that you'd be getting but less expensive, and Health Canada has tested it." Under Bill 102, if down the road the product is found not to be, who is liable? If it was me, then you can see how this can put me out of business. Interchangeability is not to be used to save on the bottom line but to allow more affordable health care to the taxpayer with no risk to their health.

Reducing rebates: This one really gets my back up. Rebates play a significant role in all businesses. Grocery stores have them for end displays and video stores get rebates for putting a certain poster up in the window. Most of us get a rebate for sending in for electric bulbs that are better, or even on your car you get a rebate. Why does Mr. Smitherman believe that pharmacy, which in my community is a business bringing health care to my area, is not able to have a rebate?

1550

Our rebate was created by drug trading under PPEP, which is an acronym for professional pharmacy education program. It was to show to all third-party insurers and drug benefit and was unanimously okayed, with no mention of a cap or a percentage needed. Why now? I even pay GST on this rebate, so health care even gets some of this money back.

For the committee to break down where the rebates go—I'll tell you right now that there's no list of couches, trips or yachts that I have in my backyard. Twenty-five hundred dollars goes to each clinic that I have, approximately 10 in a year; \$1,200 for my blood pressure machine; and just last week I caught five people who weren't aware that they had high blood pressure. How much is that saving the health care system?

Continuing education and seminars: Everybody around this table has probably had to go to a convention or seminar. How much does that cost?

Again, as I mentioned: no mention of trips, cars or yachts. I don't have any in my backyard. I don't even like the water.

Taking a rebate away will be the biggest nail in the coffin for my pharmacy, as you can see on my financial statement, which is at the very back. It shows my gross profit last year of \$62,000 and my rebates of approximately \$80,000. Take away my rebates and you don't need a calculator to see the difference.

Rebates are going to supplement areas in our community in which the health care system and the Minister of Health have fallen short. My father, who's working for me today and celebrates his 80th birthday tomorrow, Wednesday, May 31, always said that you shouldn't argue or complain in a situation unless you have some solutions. So here are my solutions to make Bill 102 better:

Pay pharmacists what they're worth. Seven dollars is a disgrace and shameful. In the front line of health care, we look at the fee as what the government thinks of us. Fifteen dollars is where it should be, and non-negotiable.

Make home care coverage supplemental, which means if a home care patient has other coverage, why is the taxpayer paying the majority of the cost? This would save \$6,000 per month at my pharmacy, which is \$72,000 a year. Multiply that by the pharmacies. We already have a program in this, as in the Trillium program.

Trial prescriptions, which were suggested by OPA, should be revamped. Thirty days is still too long. Seven to 14 days is what we need to find out if the medicine is working, and that would also save double the amount saved by drug benefits. Only lower-side-effect medicines, which are already listed in the drug benefit book, should be a 100-day supply. All other medicines should be 30 days so that we can keep track of compliance, which will decrease doctor visits and hospital visits.

Strict guidelines for prescribing for pharmacists: Before OMA and all the doctors get on my back, it's strict prescribing. Why does a patient have to go to the doctor to get a refill on test strips for diabetes when the doctor writes the prescription back, "Glucose test strips"? The doctor doesn't even know what machine they're using. This would save on money and doctor visits and take pressure off doctors.

Cognitive services, which means paying us for taking pharmaceutical care to the next level, such as diabetic educators, asthma educators and weight loss educators, to name a few. All these hats pharmacists can do, but they are cost-prohibitive to us because the cost to get to this level takes time and money, which has not been reimbursed by insurers. This must be a priority to the next-generation drug benefit. We as pharmacists are ready, but the drug benefit must find a way to reimburse that is not time consuming and a burden to a pharmacy. I plea with drug-benefit: Take the next step, cognitive reimbursement, and see how much it reduces doctor visits and hospital wait times.

In conclusion, in pharmacy, my community would like me to continue to provide the highest standard of health care. Bill 102 will not allow us to do this. We, at the front lines of health care, recognize that this system needs to be revamped, but Bill 102 goes about this by handicapping individuals who have been relied on to deliver care in the past. We have ideas to correct the problems. Just ask. So I challenge this committee to fax a simple survey to all the pharmacies, asking for one or two ways to fix the system. I know it can be done, because you should see all the faxes I got from Bill 102. I know you will be surprised with the replies.

In closing, I leave this committee with this: Being the best only means that the next day you go out and try to get better. Wouldn't it be great if we could apply this to pharmaceutical care? Bill 102 will not allow us to do this. Thank you for listening.

The Chair: Thank you, Mr. Walsh, on behalf of the committee, to both you and your family for your written deputation and your presence here.

WARDROP PHARMASAVE

The Chair: I now invite our next presenter, Mr. Trevor Wardrop, the owner of Wardrop Pharmasave. Mr. Wardrop, as you've seen, you have 10 minutes in which to make your presentation. Please begin.

Mr. Trevor Wardrop: First of all, I would like to thank you for this opportunity to speak. My name is Trevor Wardrop. I own a retail pharmacy in Port Elgin, a small town with a large senior population on the shore of Lake Huron. I have been a pharmacist for close to eight years and have owned a pharmacy for the better part of seven years.

My pharmacy education was completed outside Ontario, in Michigan, so I am licensed as a pharmacist in Michigan as well as in Ontario. When I graduated from pharmacy school, I wanted nothing more than to return to my hometown to serve the people who helped raise me to the level I am at now. Although I received numerous outstanding job offers in the state of Michigan, I still chose to return to my roots and come home to Port Elgin.

As you can see, I have a physical disability which limits my mobility. Finally, I have my pharmacy set up the way I want it for me to be a productive, helpful member of my community. Because of my past problems, I know what it's like to be on the other side of the pharmacy counter. I really enjoy helping people, because I know what I needed when I needed help.

The pharmacy I own is very physically accessible. When I purchased the store, we lowered the pharmacy counter, widened the aisles and made it more accessible and more patient-friendly. Basically, my mission was to make a difference as a health care provider and business person in the community that I love. I fear that Bill 102 may drastically change my practice in a negative way.

At my pharmacy, we offer many services that go above and beyond what is deemed required service. One service that we provide is a shuttle that travels from my

pharmacy to a medical centre eight kilometres away. This is provided to our customers free of charge and is covered by the pharmacy. Should Bill 102 go through without any amendments, this is an important service that I feel would have to be removed in order for my business to remain viable.

I'm sure you are aware of the highly accessible nature of the pharmacy profession, and that a number of residents of Ontario are currently without a family physician. That is true in Port Elgin, my hometown. My pharmacy serves as a pseudo doctor's office—I'm sure other pharmacists will attest to this fact—and there are a number of health-related questions that I receive on a daily basis. Should Bill 102 be passed in its current form, rural communities stand to suffer the most, with the potential removal of their most accessible health care provider. The wait times at emergency departments stand to become even longer, because questions that are normally asked of the pharmacist will now be asked of the emergency room doctor, much to the frustration of the ER doctor. However, a higher cost will be incurred, which will become obvious if Bill 102 passes as it stands.

Most pharmacies, including mine, offer influenza vaccination in the hope of preventing a pandemic of influenza. Should certain funding be eliminated and pharmacies close as a result of the passing of Bill 102, this could have devastating results, especially on the senior population. My pharmacy, in particular, had over 100 people vaccinated in just over four hours. Multiply that number by 3,000 and the number of pharmacy-vaccinated individuals across Ontario becomes clear. Most pharmacies operate an influenza clinic at a loss as a service to their patients and customers. This is another service that would not be provided as a result of the passing of Bill 102.

Currently, I am pursuing a master's degree in nutrition to further my knowledge in order to provide a unique aspect of pharmaceutical care to my patients. I'm also a structured practical experience program teaching associate for the University of Toronto, with the goal of helping young pharmacists become proficient in pharmaceutical care. Should the current form of Bill 102 be passed and rebates are eliminated, I feel pharmaceutical care may take a step backwards and force pharmacists who have the goal of providing elite pharmaceutical care to abandon that goal in an attempt to increase volume prescription numbers.

1600

In 2003, as you can see in your handout, I was awarded a drugstore outstanding service award as an outstanding owner/manager of a retail pharmacy. My mother was an honourable mention at this year's DOSA award ceremony in the same category. Our store has received an outstanding business award from our town for above-and-beyond service to the community. Our customers clearly value our role in the community. Again, should our business become unviable, our community suffers.

I feel that Bill 102 is trying to separate the profession of pharmacy from the business of pharmacy. This is not

possible, since in essence it is a symbiotic relationship. It's like trying to run a three-legged race with only two legs. Ultimately, the partnership fails.

In conclusion, there are obviously too many grey areas in the legislation as it stands, but the clear thing is the obvious cuts to pharmacies. These include the removal of rebate dollars from generic manufacturers, the 8% up-charge on medications and certain other aspects.

What I would like to see is a fix to Bill 102 that is viable to both pharmacy and the government. I am sympathetic with the concerns of the government as far as cost savings, but I feel that too much is being done at once. As the bill stands now, the major financial contribution comes from pharmacies. However, the ultimate suffering will be incurred by the patient population, perhaps somebody you love.

The Chair: Thank you, Mr. Wardrop. There's a minute each. We'll move to the government side.

Mr. Fonseca: Trevor, thank you very much for your presentation, and for your commitment and passion to your community in coming back to Ontario. We thank you for that.

We want to make sure that we fix a drug system that is broken today, and many of us here as MPPs have heard from all stakeholders about how the system is broken. This piece of legislation looks to fix it. As we do that, we want to make sure the profession of pharmacy is viable and sustainable today and for years to come.

In talking about that, what we want to make sure of is that through this piece of legislation—in section 19, you'll see that even after price erosion, there is an 8% guarantee that we will be bringing forward to pharmacists. We've raised the dispensing fee, and we are looking at how we can address those cognitive services you provide free of charge to the community today. We feel that the knowledge you are imparting to people in the community should be fairly compensated.

The Chair: Thank you, Mr. Fonseca. Now to the PC side.

Mr. O'Toole: Thank you very much for your presentation and dedication to your profession, and for taking the time and effort to make it here today to make your voice heard. That's what is most important. It's what you say, not what Mr. Fonseca said.

They aren't destroying health care; they're wrecking it. Yes, it needs to be fixed, and we would all agree there are some improvements in this bill.

Interjection.

Mr. O'Toole: Mr. Fonseca has had his time. He was rude to you—he lectured you—and now he's being rude to me.

These hearings are a sham. They're not listening, do you understand? They're going to yank out \$500 million and tokenistically give you back \$50 million to give some expertise, comment and assistance. If they wanted to really resolve primary care reform and integrate pharmacists into that collaborative health team, then there would be something to listen to. This process here is

about cutting money out of health care and creating a two-tier health care system.

I'm here to listen to you. Respectfully, the things you've said today are quite refreshing.

Mr. Wardrop: What I would like to ask is, how much did you pay for gas 15 years ago? How much do you pay today?

The Chair: Thank you, Mr. O'Toole. Ms. Martel, about 30 seconds or so.

Ms. Martel: Thank you for your participation.

You heard the government say what they're doing for pharmacists. I'd put it this way: On one side, you've got a 10% markup moving down to 8%—and depending on what that's on, it's even less than that—and the loss of the professional rebates, which is huge in every pharmacy. On the other side, you've got a 40-cent dispensing fee, which isn't anywhere near the actual cost, and \$50-million professional services, which among many pharmacies will be about \$17,000 per pharmacy, and then, divided again per pharmacist, doesn't even make up for the promotional rebates. What do you think? Is that a fair deal for you?

Mr. Wardrop: No, I don't feel it's a fair deal. I go back to my answer before. Everything has increased, but a 40-cent increase in a fee is ludicrous, really. When you think of what you paid for even gasoline 15 years ago, we still have the same fee now, basically, that we had 15 years ago.

The Chair: On behalf of the committee, Mr. Wardrop, we'd like to thank you for your presence and deputation today.

TORONTO BIOTECHNOLOGY INITIATIVE

The Chair: I would now like to, on behalf of the committee, invite our next speakers, Mr. Grant Tipler, president, and Mr. Jeffrey Graham, corporate secretary, of the Toronto Biotechnology Initiative. Gentlemen, please be seated. As you've seen the protocol, you have 10 minutes in which to make your combined presentation, beginning now.

Mr. Grant Tipler: Good afternoon, and thank you for the opportunity to appear before the committee. The Toronto Biotechnology Initiative represents all facets of the biotechnology community in the greater Toronto area, including biotech and biopharmaceutical companies, researchers, students, investment firms and consultants. TBI has a long history of contributing to the community in the form of education and networking activities, and has on occasion been an important contributor to the public policy exercises within Ontario where interests of the sector have been put at risk. It is in that latter capacity that we appear before the committee today.

Ontario benefits from a well-established drug manufacturing industry, both brand name and generic, as well as a biotech sector with the greatest promise of any in North America. Next to the United States, Canada has more biotech companies than any other country, and

Ontario is home to many of them. The promise of biotech is just beginning to be reflected in a growing number of biotech, medical diagnostic and therapeutic applications entering the market.

Aspects of Bill 102 raise serious questions about the commitment of the government of Ontario to encourage a biotech sector as a centerpiece of its innovation strategy. At the same time as the Premier, also the Minister of Research and Innovation, is singing the praises of Ontario as a great place to commercialize biotech, the Ontario Minister of Health and Long-Term Care is announcing changes to the rules and policies related to drugs that diminish the economic prospects of brand name drug manufacturers in Ontario and in other parts of Canada as well. This is not the stated objective of the changes announced, but it is one of the obvious consequences.

Why should those of us who are concerned with the future of biotech in Ontario and Canada be troubled by Bill 102? The greatest promise for biotech in Ontario is in the medical sector. It is where the greatest number of Ontario biotech companies are developing products. These will be Canadian products that improve the diagnosis and treatment of disease of our citizens and become important sources of exports to other parts of the world.

Aspects of Bill 102 will impose unprecedented restrictions on the sale of brand name products in Ontario that will make it more difficult for Ontario biotech to be successful. Biotech benefits from a strong and growing drug manufacturing sector. That is not only true of Ontario. In virtually every country where there is a thriving biotech sector, one can point to a significant brand name drug presence close at hand. Drug companies are a source of investment capital to biotech, and essential partners for research and development activities and product commercialization. To the extent that brand name drug companies will find Ontario a materially less attractive place in which to do business as a result of Bill 102, Ontario biotech will be disadvantaged. Ontario biotech will find it more difficult to do deals with brand name companies, and the pool of experienced managerial talent from which biotech recruits many of its business leaders will be diminished.

At the same time, it will be more difficult to attract new brand drug manufacturing and biotech activity to Ontario. Bill 102 is widely perceived in the international biotech community as anti-brand name drug manufacturers and, by extension, anti-biotech. The work of the leaders of the brand name companies in attracting world product mandates to Ontario is being seriously undermined. The ability of the government to promote Ontario as a place to do biotech will suffer the same fate.

1610

What should the government do now? The government should rethink its decision to press ahead with Bill 102 and the related policies on an artificial timetable designed to limit informed discussion. To this point, there has been no meaningful consultation on Bill 102 and the related policies. The government's claim that

there were extensive consultations before the release of Bill 102 in mid-April is simply not correct. There was an earlier extensive fact-finding process that involved many stakeholders, but at no time prior to the release of Bill 102 were there any consultations on what has been proposed in the bill and in the related policies.

Contrast the Ontario process with the more respectful process of drug policy review in Quebec that began in 2004 with a government policy paper and public hearings, followed by legislation last year. The Quebec policy paper recognized the importance of balancing the health policy objectives of access to formularies, fair and reasonable prices, and optimal drug use with maintaining a dynamic pharmaceutical sector in Quebec. This final policy objective, a dynamic pharmaceutical sector, is inexplicably missing from the Ontario exercise. To quote from the Quebec paper, "The pharmaceutical sector is a major player in the Quebec economy. It is therefore important to link health and industrial policy in order to ensure that the government acts coherently in these fields." How could anyone disagree with that observation, and why is the same statement missing from the Ontario initiative?

Specifically, what are we recommending? The government should complete the policy-making process in a sensible and respectful manner.

First, the Ministry of Health should be required to work with the other ministries of government that have an interest in drug policies, including finance, economic development, and research and innovation, in completing the economic and related analysis that should underlie changes to drug policy. Our sense is that this was never properly undertaken and the consequences of Bill 102 and the related policies were never fully considered, either by health or, for that matter, by these other ministries. The full economic consequences of each of the various initiatives with Bill 102 and the related policies needs to be considered, not simply the hoped for financial saving for the budget of the Ministry of Health.

Once that process of internal consultation and analysis is completed, the government should release details of the various proposed policies that are related to Bill 102 and that have been announced in brief summary only. To do anything less at this point would be, with respect, not responsible government. We have the right to insist that government make policy in a manner that is open and transparent and in the best long-term interests of its citizens. We are prepared to work with the government to turn this process into something we can all be proud of.

We urge this committee to heed this advice and recommend that further consideration of the bill be postponed until the policy-making process has been properly completed.

Thank you. We are now happy to take questions.

The Chair: Thank you, Mr. Tipler. We'll begin with the PC side. A minute each.

Mr. O'Toole: Thank you very much. I don't know where to begin. We did hear a similar presentation yesterday from Mark Poznansky of the Robarts Research

Institute, saying the rudeness of looking at the loss of R and D and the growth to advantage the treatment of our citizens and complex diseases—we're being denied that.

I think it's true as well, as you've said—I tried to make the question to the minister today say pretty much what you've said here: "The government should rethink its decision to press ahead with Bill 102 and the related policies on an artificial timetable designed to limit informed discussion." It's absolutely true. You're seeing it here: 10 minutes to deal with such a complex, important component of health care, which is the number one issue to our constituents. You said, "The government's claim that there were extensive consultations before the release of Bill 102 in mid-April is simply not correct." I would use a stronger word than that.

That's why I'm surprised that the government members, some of whom are doctors—actually, the Chair is—are sitting here placidly, eating the pabulum given to them by George Smitherman. It's insulting. You, as a researcher, understand that. I think—

The Chair: Thank you, Mr. O'Toole. Ms. Martel.

Ms. Martel: Thank you for being here. I want to focus on your point that there has been no meaningful consultation on Bill 102, because the government's going to talk about all the consultations with Helen Stevenson. Do you want to tell me the difference between the meetings with Helen Stevenson, if you ever had any, what went on at that time, and then the bill that's before you?

Mr. Tipler: The consultations we're referring to were certainly early on in the process. They were meeting with patients' groups to try and understand facts. Really, the issue we have, and as part of a meeting with Biotech Canada—we did meet with Helen Stevenson and we did talk about some of the contents within the procedures and policies that they were going to develop. A lot of it was, "Please trust me. We're going to work through these over the next number of months, but we don't know what they are and truly where we're going to get to."

Ms. Martel: You never saw a copy of the bill, though, at any point?

Mr. Tipler: No.

The Chair: Thank you, Ms. Martel. To the government side. Mr. Peterson.

Mr. Peterson: Thank you very much for your presentation. You emphasized that you're concerned about the branded industry being compromised by Bill 102 and that it'll hurt the biotechnology sector, yet we've had representations from the generic sector saying that as a percentage of sales, they have a much higher R&D component, and biotechnology is not chemical technology. I understand that they're the study of the hormones and the natural chemicals in the body, which is quite different from the drug industry. Could you explain this a little better for me?

Mr. Tipler: Truly, biotechnology is involved with forms of life, things that are natural within the body, compared to chemical entities which are built up. Really, the issue we have with regard to a strong biopharmaceutical industry is that about 30% of the funding of biotechnology companies comes from big pharma. Big

pharma are the companies that are taking the biotechnology products through to the clinic, and ultimately, hopefully, we get them through commercialization.

The Chair: Thank you, Mr. Peterson, and thanks to you, gentlemen, Mr. Tipler and Mr. Graham, for your deputation and presence on behalf of the Toronto Biotechnology Initiative.

APOTEX

The Chair: I would now like, on behalf of the committee, to invite our next presenter, Mr. Jack Kay, president and chief operating officer of Apotex, and colleagues. Mr. Kay, as you have seen, you have 10 minutes in which to make your presentation. Please begin.

Mr. Jack Kay: Thank you for allowing the Apotex Group to present to the standing committee on social policy reviewing Bill 102.

I am Jack Kay, president and chief operating officer, and sitting beside me to my left is Linda Prytula, manager, government and public relations, for Apotex and a past chair of the Ontario Pharmacists' Association.

First, let me talk about Apotex and its importance to the Ontario economy. We are the largest pharma-health care company in the province and have a huge impact on this economy. We are Canadian-owned, with headquarters in Ontario.

Apotex has close to 5,000 employees in 21 facilities dedicated to research and development, production and distribution of generic and innovative medicines. They are located across Ontario, from Windsor, London, Brantford, Mississauga, Etobicoke and North York to Richmond Hill. Our salaries and benefits total close to \$300 million per year, mostly in Ontario. Over the last 10 years, we have invested over \$1 billion in our infrastructure in this province. We intend to spend another \$20 million in building a new research and development facility over the next 24 months.

Apotex is the only vertically integrated pharmaceutical company in Canada and includes the research and development of fine chemicals for generic pharmaceuticals, which is our strength. As well, our organization includes innovative drugs through ApoPharma and biotechnology products through one of the largest biotech companies in Canada, Cangene, which is a publicly traded, TSE-listed company in which Apotex controls 83% of the common shares.

I would like to now blow out of the water a myth that has persisted for years that generics don't do research and development. The Apotex Group is the number one company in Canada in R&D spending for all pharmaceutical companies and number 12 across all business sectors, including companies like Nortel. We have planned R&D expenditures of over \$2 billion over the next 10 years, and most of it will be spent in Ontario. We are a partner in the MaRS building, with research going on for innovative drugs through ApoPharma.

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Out of our 5,000 employees, we have close to 2,000 scientific staff, including over 100 Ph.Ds working on 606

future generic, innovative and biotechnology medicines. Since our headquarters are in Ontario, our product mandate is worldwide. We impact the Ontario economy by exporting these medicines to 115 countries. This represents over 40% of what we manufacture in Canada.

Our production capacity in all of our facilities is 20 billion tablets and capsules per year, which is more than all of the brand industry in Canada combined. Most of their products are imported, increasing the trade deficit to over \$6 billion on a \$13-billion industry.

Here is our position on Bill 102: Apotex strongly supports the government in its attempts for greater utilization of generics through off-formulary interchangeability (OFI) and interchangeability of “same” and “similar.”

Ontario was one of the few jurisdictions in North America which did not designate generic drugs as interchangeable with brand name drugs that were not listed as benefits on the Ontario drug formulary. This important proposal, which brings us in line with other jurisdictions, will save Ontario employers and consumers \$35 million in the first year. Businesses with drug plans in the province are supportive of this change. Also, with OFI, if the market switches to domestically manufactured products, this will result in more investment in Ontario by not only manufacturers such as Apotex but by employers as well.

On “the same” and “similar,” the proposed wording for “similar” is not—I repeat, is not—an opening for therapeutic substitution. The same molecule but with a different salt is functionally the same as our tablets and capsules of the same molecule.

The case of Apo Omeprazole, the generic of Astra Zeneca’s Losec, is a prime example of where the Ontario government could have saved over \$70 million, and another \$70 million for employers, if the government had listed it as interchangeable from January 2004, when it first received its approval on the Canadian market. Most of the other provinces made it interchangeable, but not Ontario.

On the price reduction of generics, it should not be arbitrary and implemented without allowing flexibility by generic companies to price certain molecules to recoup costs and make an acceptable profit. A flat 50% price reduction cannot work. It will result in certain products not being brought to market and the government paying the higher cost. Does it make sense to say, “If we can’t save 50% on generics, we will save nothing”?

The generic industry is not the problem with escalating drug expenditures; it is the solution. The generic industry represents only 17.3% of drug expenditures in Ontario, while the brand industry represents 82.7%. Yet 44.8% of all prescriptions in Ontario are filled generically.

In conclusion, the current reimbursement model for generics has evolved over the past 15 years since a price freeze was put into place in 1992 by the Ontario Drug Benefit Formulary. It has forced companies to increase prices, which has resulted in numerous cost-to-operator claims and a reduction in pharmacy revenue. The government has always been aware of allowances paid by

generic companies to promote their products, and took that into consideration in not paying a fair and reasonable professional fee to pharmacists.

On September 1, 1998, a letter of understanding between the Ontario government and the generic industry was signed. Specifically, point (f) stated, “The Ministry of Health will initiate a process in October of 1998 with affected stakeholders for the purposes of ensuring that the ODB plan reimburses the lowest possible cost on generic products.”

Ladies and gentlemen, this process never took place until the introduction of Bill 102 in 2006 by this government.

As a final point, it is necessary to state unequivocally that generic drugs in Canada are as safe and effective as the brand name products that we genericize. The anecdotal evidence has never been proven by any scientific evidence.

Having said that, we support the passage of Bill 102 and look forward to discussions on the regulations which will dictate how we do business not only in Ontario but in the rest of Canada.

Thank you, and we are prepared to take questions.

The Chair: Thank you, Mr. Kay. We have an efficient 30 seconds each, with Ms. Martel of the NDP.

Ms. Martel: Earlier, some other generic companies came and said they would prefer to see the two-price structure maintained in place; that is, the first one into the market with innovation is 70% and then a decline from there, a scale-down from there. What do you think about that proposal?

Mr. Kay: I support that, except that the 70% is arbitrary. My concern is that we are developing generic biologicals, and to come in at 70% might not be economically feasible, which is why we’re saying that there has to be some flexibility, because to develop generic biologicals, we have to do clinical studies, which can cost between \$5 million and \$10 million.

The Chair: Thank you, Ms. Martel, with apologies, Mr. Kay. To the government side, Mr. Peterson.

Mr. Peterson: We understand your concerns about our decree on prices, but, as the government, we’re concerned about the value we get when the prices are high and you give big rebates. We’re looking at trying to maintain the viability of our drug benefit plan. Could you comment on your price concerns in relation to the massive markups you give?

Mr. Kay: They’re promotional allowances. I think the generic industry has a right to promote its products, as the brand industry does. The brand industry spends 25% to 30% of their revenues promoting their products to physicians to generate a prescription. We promote our products to pharmacists, who make the buying decisions.

The Chair: To the PC side, Mr. Jackson.

Mr. Jackson: Mr. Kay, I’m familiar with your presentation. If not a form of a rebate or an educational allowance, what should happen to the pharmacist’s dispensing fee in the province in order to compensate them fairly, in your opinion, as a generic manufacturer, if in fact the government is going to pinch on the rebates?

Mr. Kay: I think the fee should be increased much greater than the 46 cents that it has been increased. It should go up by at least a dollar and a half to \$2.

The Chair: Thank you, Mr. Kay, on behalf of all members of this committee, for your presence, written presentation and deputation on behalf of Apotex.

CANCER CARE ONTARIO

The Chair: I will now call, on behalf of the committee, our next presenter, Mr. Terry Sullivan, the president and chief executive officer of Cancer Care Ontario. Mr. Sullivan, as you're aware, you have 10 minutes in which to make your presentation, which begins now.

Mr. Terrence Sullivan: Thank you very much, Mr. Chair. I would also like to introduce, to my right, the chair of our board, Mr. Peter Crossgrove, and to my left, Dr. Carol Sawka, who is our vice-president, clinical programs. Dr. Sawka is a medical oncologist who practises at Sunnybrook and is a member of the faculties of health policy, management and evaluation, medicine, and public health sciences, and I'm also a member of the faculties of health policy, management and evaluation, and public health sciences at the University of Toronto.

First of all, let me state for members of the committee that Cancer Care Ontario is an agency of the provincial government, with a board of directors chaired by Mr. Crossgrove. We act as an umbrella organization to promote the highest possible standards of cancer services and steward close to half a billion dollars of provincial funds on behalf of the provincial government to promote improvements in the quality of cancer services and ensure optimal care for patients in Ontario.

I would say at the outset that Cancer Care Ontario fully supports the government's proposed initiative to reform the provincial drug system. We believe this legislative initiative is only part of the larger reform package that was announced some weeks ago, and we want to ensure that the full package makes its way through to a complete reform. We are committed to working with our provincial government to ensure that this happens.

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Beginning in 1997, Cancer Care Ontario began to work in the evolution of a new drug funding program for Ontario that is now spending in excess of \$112 million, in this past year, for new and expensive cancer drugs. Cancer drugs, as members of the committee will know, are among the fastest-growing classes of new drugs because of new biological agents entering the marketplace, with very expensive initial prices.

Recently, we've also aligned the approval mechanism for the new drug funding program with the Ontario drug benefit program, and through this bill we will adopt the processes and procedures applied to the ODB as well as the broader policy reform in our management of the new drug funding program.

Our recommendations are focused on addressing the principles set out in the bill. We fully support the notion of consumer and patient involvement in transparency,

fiscal accountability and the use of evidence in decision-making, and the application of those principles throughout the drug system.

As a general point, we believe that principle one should be amended to strengthen the role of Ontarians as patients as well as consumers and taxpayers. With respect to transparency, we would like to ensure that we have much greater transparency in the drug approval process in Ontario. With respect to the bill, the clarity should be strengthened in the bill with respect to how this will be implemented.

In support of this principle of transparency, we recommend that the executive officer be required to keep, maintain and publish a summary of their decisions, including reference to the evidence base on which these decisions were made in designating a product as being interchangeable with another product; to designate a product as a listed product under the Ontario drug benefit program and under the exceptional access mechanisms in the new section 16 of the bill; and that regulations made under the Ontario drug benefit program and the interchangeability be subject to a public consultation process.

We support the principle involving consumers and patients in a meaningful way in public drug reform, and we support the creation of a citizens' council to provide input to add consumer and patient voices to the complex social and medical decisions that must be made with respect to new and expensive drugs.

We also support the inclusion of lay representation and patient representation on the Drug Quality and Therapeutics Committee. It's important that the mechanisms to ensure public and patient participation be established through a consultative process.

We also support the principle of ensuring that funding decisions for drugs are based on the best available clinical and academic evidence available. I'm proud to say, with respect to cancer drugs, that we have a long tradition of doing this with clarity.

We recommend that Bill 102 recognize the decisions of the executive officer to designate a product as being interchangeable with another when it's designated as a listed product under the Ontario Drug Benefit Act and when the exceptional circumstance mechanism is used.

With respect to timely decision-making, we believe principle five should be amended to recognize the importance of timely decision-making and timely communication of decision-making as fundamental to the effectiveness of the drug system. We recommend that the regulations to Bill 102 set out time periods and performance measures for making and communicating decisions by the executive officer.

With respect to exceptional access, we recommend that section 16 of the Ontario Drug Benefit Act be amended to provide that where the executive officer approves the funding of a drug under the exceptional access provision, for same or substantially similar indications in a designated fraction of cases, the drug in question should be referred to the DQTC for consideration as to whether it should be more broadly listed on the public formulary.

The Chair: Thank you very much, Mr. Sullivan. We have about two minutes per side, beginning with the government.

Mr. Peterson: Thank you very much for your terrific presentation. It's great that you brought with you such a distinguished colleague to help you in the fight of cancer. Mr. Crossgrove is very noted for all the wonderful philanthropic things he's done, and I hope he's doing as good a job for you as he did for everybody else.

I'd like to defer this question to my colleague Kathleen Wynne.

Ms. Wynne: Nice to see you. Thanks for being here. You've come up with some very specific recommendations. My question was, are you in conversation with the ministry about these? Have you been in conversation? Can you talk about that?

Mr. Sullivan: Yes. We have been in conversation with the ministry and with Helen Stevenson throughout this process.

Ms. Wynne: Right. So from your perspective, has it been a good process in terms of us coming to the point where we've written this legislation, we've brought these recommendations forward?

Mr. Sullivan: It's been a good process from the perspective of our engagement in the consultation. Until the legislation was unveiled, we had no clear understanding as to what was in. As I stated at the beginning, we want to ensure that both the statute and the broader policy and administrative reforms move forward as a complete package.

Ms. Wynne: I understand, and some of the things you've talked about have been brought to us by others. You've added some language as well that we hadn't heard from other groups. We've heard some concerns about the consultation process and, from our perspective, there has been not just fact finding but also a back-and-forth with stakeholders, with patients, with providers about what should be in the legislation.

The Chair: Mr. Jackson.

Mr. Jackson: Terry, it's good to see you again. I admire the work you're doing. I'm sensitive to the fact that you are going through a tremendous number of changes in terms of how the government allows you to manage the drug component, and this is tricky. You know my strong feelings on this. I want to go to page 4, where you talk about the unfortunate consequences of the alignment of the new drug funding program and those of the ODB. Are you not concerned that not only will cancer patients not have as much input in this procedure but that the accountability will evaporate from publicly elected individuals to one individual whose process—we have yet to see how it will be operationalized in terms of getting new drugs into a formulary or, more directly, in the hands of your oncologists.

Mr. Sullivan: I think, with respect to patient engagement and public involvement, the bill is striking exactly the right chord. There does need to be broader patient engagement in the decision-making. It happens that when we worked out a relationship with the ODB, patients

were not involved, and we're all aware of the fact that this is not a transparent process. In that sense, we have conveyed, and the government has heard clearly from us and others the—

The Chair: Thank you, Mr. Jackson. I will have to offer the floor now to Ms. Martel of the NDP.

Ms. Martel: Thank you for being here. My concern has to do with consumer and patient representation. You know there's nothing in the bill to allow for that either on the drug quality and therapeutics committee or on the citizens' council. There are no provisions in the bill for that.

My real concern has to do with the new cancer funding mechanism that was set up in 2005, whereby representatives from CCO and the DQTC deal with funding for cancer drugs, and there's no mechanism in this bill for consumers—for patients—to sit on that committee. That is key, because it's that committee that's making decisions about cancer drugs, not the DQTC.

Mr. Sullivan: To be absolutely correct, it is the DQTC. This panel recommends to the DQTC. In most cases, the DQTC is concurring; in some cases it isn't concurring. None of that is currently transparent. So we would like to see patient involvement in both of those committees.

Ms. Martel: On the joint CCO-DQTC subcommittee as well?

Mr. Sullivan: Yes.

Ms. Martel: Thank you.

My final question, section 16: Is this supposed to apply to intravenous cancer drugs as well? There's no mention of oncologists being able to apply and there's no mention of intravenous cancer drugs.

Mr. Sullivan: I think the intention is that we will manage this as a parallel process with the new drug funding program, using this as the same template. Section 16 is—

The Chair: Thank you, Ms. Martel. Thank you as well, Mr. Crossgrove, Mr. Sullivan and Dr. Sawka, for your deputation on behalf of Cancer Care Ontario.

ASTRAZENECA CANADA INC.

The Chair: I would now, on behalf of the committee, invite our next presenter, Mr. Michael Cloutier, president and chief executive officer of AstraZeneca Canada, and colleagues. Mr. Cloutier, and to your colleagues, you've seen the protocol. You have 10 minutes in which to make your combined presentation, beginning now. Please begin.

Mr. Michael Cloutier: Good afternoon, and thank you very much for the opportunity to address this committee. I am Mike Cloutier, president and CEO of AstraZeneca Canada.

Let me begin with telling you a little bit about who we are. In Canada, AstraZeneca is the second-largest pharmaceutical company in terms of revenues. We generate about \$1.1 billion per year. We employ more than 1,400 Canadians from coast to coast to coast. And we have a state-of-the-art basic research centre in Montreal.

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In Ontario, we are one of the largest research-based pharmaceutical companies, employing more than 800 Ontarians at our Canadian head office, which is located in Mississauga.

AstraZeneca has invested more than \$400 million in research and development in Canada over the past four years: That's more than \$100 million per year. In 2005, AstraZeneca conducted more than 250 clinical studies throughout the country. Through those clinical studies we involved more than 1,300 medical practitioners and more than 11,000 patients.

Our research centre in Montreal is one of only three pharmaceutical basic research centres that remain in Canada. We employ 125 primary research scientists that focus on new cures for acute and chronic pain. I'm very proud to tell you that this research centre which is a significant victory for Canada and for our company, because we operate in a global environment where it is increasingly difficult to bring research and innovation dollars to this country. The reason for it is that our country represents less than 2% of the overall global market.

Our decision to locate that research centre in Montreal—as all good businesses are—was based on the right blend of scientific talent, economic market conditions and a government that publicly supports our company, our industry and the partnerships that we continue to bring to improve the health care of patients throughout all of Canada. However, Ontario is our home in Canada.

As many of you know, we have just completed the building of our new Canadian business centre, our head office in Mississauga, and our commitment to Ontario is clear. In 2005 we invested more than \$46 million in qualifying research and development and more than \$6.4 million in non-qualifying research and development here in the province. In addition to that investment, we have funded a number of research chairs amounting to more than \$8 million.

We support the government of Ontario's priorities on creating a culture of innovation. In our view, to build a culture of innovation we need to do three important things: the first is we must invest in education; the second is that we invest and support research and development; and third, that we foster an environment of commercialization here at home in the province. We at AstraZeneca Canada are deeply committed to supporting these three pillars to create a culture of innovation in Ontario.

I'd like to give you some further examples of just how committed we are to those three areas. With regard to education, AstraZeneca partnered with the government of Ontario recently to create a \$1-million endowment to the Northern Ontario School of Medicine bursary fund. In research, in addition to the previous investments that I mentioned, AstraZeneca has provided the Ontario Cancer Research Network with a \$1-million grant in support of important oncology research here in the province. And finally, with regard to commercialization, we are a

founding partner of MaRS. Our initial investment of \$1 million most certainly helped MaRS to become a reality, and we are now contemplating an investment of an additional \$1 million to ensure the successful future of commercialization of Ontario's discoveries that will come about as a result of MaRS.

But let's be perfectly clear: These are exactly the types of investments that Bill 102 in its present form is putting at significant risk.

Our business is about patients. Our business is about improving health outcomes and enhancing patients' lives. We are very proud to be a global leader in six therapeutic areas including cardiology, oncology, infectious disease, respiratory, the neurosciences and gastroenterology. Patients rely on our products each and every day to help cure, manage and control their diseases.

So where does that leave us? Well, let me tell you what I can and what I can't support in Bill 102.

AstraZeneca Canada absolutely supports an increased role for patients, and increased transparency in the drug system. Patients need to have a say in the establishment of policies that governs the Ontario's drug system, as well as a direct role in deciding what medicines get reimbursed or not, and the rationale for such decisions.

We also support the increased role of pharmacists that we'll have under Bill 102. As we move to an integrated health care system, it is critical that all parties work together to improve patient outcomes. That means that physicians need to be able to make the right choices in prescribing for their patients, and pharmacists need to play a critical role in education and appropriate-use counselling and, as such, should be fairly compensated for their role. We support the provisions in the legislation that expedite the listing of new medicines. And we know that section 8 has been a long-standing issue within ODB, and the efforts to bring it back to its original mandate are most certainly welcome.

What, then, are the sections of Bill 102 that need to be amended? There are four.

The first is in the area of breakthrough medicines. While we are glad to see the recognition of breakthrough medicines and the acceleration of their approval, we must ensure that the definition of "breakthrough" also includes incremental innovation, including those small, measured improvements which are the very foundation of enhanced patient care and health outcomes. Therefore, Bill 102 needs to be amended to include in the legislation a broad enough definition of breakthrough medicines that recognizes incremental innovation as better patient outcomes and/or financial efficiencies for the province of Ontario.

The second area is with regard to therapeutic substitution. The government has on several occasions throughout this process stated that their intent and the intent of Bill 102 is not therapeutic substitution. We are encouraged by those statements; however, the current language of the legislation does not reflect that intent. In its present state, Bill 102 will force patients off their medications. This will interfere with the ability of physicians and patients to choose the right medicine for the right patient

at the right time. It is therefore critical that Bill 102 and its related regulations define “therapeutic substitution” and include language prohibiting this from occurring.

The third area is in regard to interchangeability. Currently, Bill 102 changes the requirements of interchangeability from “same” to “similar” dosage form and active ingredients. This broadening to “similar” allows for the interchangeability of different chemical molecules within a therapeutic area, not just brand-to-generic interchangeability but also brand-to-brand interchangeability. This provision unduly interferes with the role of doctors and their patients and places patients at risk. Again, the government has stated that this is not their intent. Therefore, the word “similar” should be stricken from the legislation and the word “same” should continue to be the standard by which interchangeability is deemed.

The fourth and final area is with regard to the executive officer’s powers. The person will be responsible for negotiating partnership agreements, competitive agreements deciding which medicines are listed on the ODB and which ones are not, in addition to being responsible for enforcing the provisions of the act. As such, a fair and transparent appeal process of these decisions made by the executive officer must be included in the legislation.

Finally, there are other provisions in the legislation, such as OFI and the 12-year price freeze, that need to be discussed seriously and amended, as they do impact the industry’s ability to remain competitive and to attract new investments for us here in Ontario.

In conclusion, we are extremely proud of AstraZeneca Canada’s partnership with the Ontario government in the past. We want to continue to move forward in the spirit of partnership with the government of Ontario in the future. We believe that in order to achieve its objectives related to patient outcomes and ensure that Ontario also achieves its objectives in making it a jurisdiction that’s a leader in innovation, Bill 102 must be amended as I have outlined. We recommend that a cross-ministry initiative composed of the Ministries of Health, Research and Innovation, and Economic Development and Trade be established to ensure that health and economic policies are aligned in Ontario and that the necessary amendments to Bill 102 are passed. We also look forward to continuing our work together on the development of a life sciences strategy, because together we can achieve better patient outcomes and a fostering environment for research and development investments, and ensure a prosperous Ontario for all of us. Thank you very much.

The Chair: Thank you, Mr. Cloutier, on behalf of the committee for your deputation and your presence today from AstraZeneca Canada.

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PRESCRIPTION SHOPPE

The Chair: I would now invite our next presenter to come forward: Ms. Heidi Hanna of the Prescription Shoppe. Ms. Hanna, as you’ve seen, you have 10 minutes in which to make your combined presentation. Please begin.

Ms. Heidi Hanna: My name is Heidi Hanna. My husband and I are both co-owners of the Prescription Shoppe, a small pharmacy in Galt, Cambridge.

Bill 102, as it currently stands, will result in the destruction of our family business. Banning the funding from generic companies will decrease our pharmacy income by more than 50%. Lowering the markup to 8% is again taking away desperately needed funds. The amount that can be retrieved from these cognitive fees that the minister keeps jumping up and down about is only \$17,000 on average per pharmacy. That is insufficient when you’re taking away over \$100,000 in funding from generic rebates. The meagre 46-cent increase in fees does not even begin to cover the real cost of dispensing prescriptions in Ontario today. Ontario is the province with the lowest dispensing fee in Canada, and continues to remain so.

Bill 102 will affect our patients, our community and our family. Let me first explain to you the services that we provide to our patients and our community.

We offer free delivery. That’s essential, because 85% of our patients are seniors. Many of them live in rural areas and are not able to drive. We have several seniors who are homebound and have no access to their medication other than our delivery service.

We continue to waive the \$2 copayment for low-income patients, making their medication more accessible to them. By doing so, we are subsidizing Ontario’s health care system.

We have our patients’ best interests at heart. Where a prescription is provided for a medication—that is, an over-the-counter medication—we look at the cost to the patient, and if it’s cheaper to waive our fee and give them the medication as an OTC product, we do so.

We have free clinic days that cost us from hundreds of dollars to \$1,000, and we provide home counselling for our homebound patients. We are the essential link between the patient, the doctor and the specialist.

The pharmacist in our pharmacy is the problem-solver. He is the one who will communicate with the patient, take the time to talk to the patient and understand their needs and concerns. He will communicate those needs and concerns to their doctors to help them determine whether this medication is meeting their needs or not.

All of these are services that are necessary to good patient care, and they require a great deal of time. The cognitive fees of only \$17,000 offered by the government don’t even begin to cover the time investment that is required.

The community services that we offer: As a local business, we pay our share of taxes. We declare our generic rebates on our financial statements and pay our share of corporate taxes on those.

We provide a free drug disposal service that protects the environment. In the region of Waterloo, that’s particularly important, where we are struggling to find our drinking water supplies.

We regularly contribute to local charities. We support charities such as the Alzheimer Society, the diabetes

society, Cambridge Memorial Hospital, the mental health unit and the Lions Club.

We give community awareness lectures. We go to seniors' homes and to high schools and we give them lectures about drug abuse and drug interaction.

The result of Bill 102 on our patient care is going to mean a cutback of staff. We are going to cut back our hours. That means that we are going to cut back on the interaction and time we spend with our patients. Without spending that time with our patients, we are not able to do the problem-solving, the counselling and the additional medical reviews that are needed to provide excellent care for these patients. If we can't provide this, the patients need to seek this information elsewhere, which is going to result in increased patient visits to their doctors, to their specialists and to emergency rooms. If we can't survive as a business because of funding taken away from us, who is going to serve our rural seniors?

Patients come to small pharmacies because they are not treated as numbers. They want to be treated as people. They want someone that they can talk to who will take the time to understand them and who will help to serve their needs. These patients will be lost if we are closed down because of Bill 102.

Our community will also suffer. It will lose a tax base from the taxes that we pay as a corporation and as individuals. Six families—we employ six other employees besides my husband, who is the pharmacist—will suffer because we have to have layoffs. The environment will suffer because we can no longer afford to keep up our drug disposal program. If we have to charge for that, people won't use it. The local charities we support will suffer.

Particularly in the region of Waterloo, where a great deal of money has been spent opening a second pharmacy school, you are limiting or decreasing the demand for pharmacists by forcing the closure of at least 300 independent pharmacies. You are taking away the jobs for these graduates. You are forcing them to go to other provinces. There is no logic in what is being done. If you open a second pharmacy school to meet a demand for pharmacists and you're closing pharmacies down, it seems to me that there's a great deal of money being wasted.

The third aspect I would like to discuss is the effects on my family. This is something this government has been very flippant about. The director of the DSS will come out and say, "Yes, pharmacies will be closed." But nobody cares about what that means to pharmacy owners. Any business owner in Ontario, where the government closes down their business because of changes in regulations, should at least be heard by their MPP. John Milloy didn't even give me the time of day.

This government has had a very callous attitude and has no understanding of what it means to be a small business owner with children to support. You are looking at them and you bought this business for their future, to be able to afford to put them through school. Now you say, "Pharmacies will close. Big deal." Those were the

comments made by the director of the DSS. Perhaps this government should take some time and think about the pain and isolation of being financially destroyed and what that means to you as a parent.

My recommendations for this government are to take the time and think and consult with independent pharmacists; we all want an improved drug system. Talk to the independent pharmacists and see what they can offer you. That hasn't been done. Ensure that the generic companies continue to invest in Ontario pharmacies, because these rebate programs are key to the survival of our pharmacy—not just ours; there are hundreds of other pharmacies that are in the same position. The 8% markup should be applied to medications after the wholesaler cost markup. Cognitive fees need to be increased to accurately reflect the time that is spent and the cost of patient care. The fee increase of 46 cents is ridiculous. The fee increase should be over four dollars. It has been widely accepted that the cost of dispensing a prescription is over \$10 in Ontario. The fee increase needs to accurately show that.

Thank you for your time.

The Chair: Thank you, Ms. Hanna. Regrettably, your time has expired. On behalf of the committee, I'd like to thank you for your presence and your presentation on behalf of the Prescription Shoppe.

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KEN BURNS

The Chair: I would now like to invite our next presenter, Mr. Ken Burns. Mr. Burns, as you've seen the protocol, you have 10 minutes in which to make your combined presentation, beginning now.

Mr. Ken Burns: Hello, and thank you, committee members, for your attention today. My name is Ken Burns, and I am a pharmacist practising in northern Ontario in the town of Chelmsford, about 40 kilometres past the city of Sudbury. I hope, over the next few minutes, to give you a sense of what I do in health care, what I should do more of in the future and how Bill 102 impacts upon my present and my future and, more importantly, the future of my patients.

I have been practising for over 20 years, 15 of those in Chelmsford. My community currently has a physician shortage, with over 2,000 people without a family doctor. Those who do have a family doctor often wait several weeks for appointments. Fortunately, I am available as a primary care provider within my community. My patients can walk in off the street and ask me questions about their health. When you combine prescriptions and consultations, I can interact with hundreds of patients each week. Some need a minute, some five minutes and some half an hour. I attempt to accommodate all of their needs.

I have learned a few things in my years of practice. One is that to be truly effective as a health professional, you must develop caring relationships with patients that are based on mutual trust. I believe I have developed that. To quote one of my patients, "When I want the real

answer, Ken, I come to ask you.” As we develop a health care system that attempts to cultivate the responsibility of patients for their own health, they will need the support of people like me in their community.

Every day I work with physicians and other health providers to help my patients with their medications and their medical conditions. Often there are gaps in care where the patient and I are the only ones left to try to manage issues. Whether it is maintaining an existing treatment when physicians aren’t available, sorting out different recommendations from different providers or trying to find or access other services, my patients often come to me.

I’ve also identified in my town a few significant health issues. There is a high incidence of asthma and diabetes in the area. Several years ago, I instituted programs to help patients manage these conditions. I became a certified diabetes educator and a certified asthma educator to better help them. I recognized that there were a lot of needs my patients had that weren’t being met by anyone in the health care system, and that their health was the worse for it.

For example, patients with diabetes monitor their blood sugar levels to help them assess how well they are controlling their condition. The Ministry of Health spends millions of dollars to supply test strips to these patients, and very little to ensure that they know what the numbers mean or what to do with the information once they have it. In my practice, I download test results electronically and aggregate the information to analyze it in a graphic format. I use that to go over the information with the patient, helping them understand how their diet, exercise, weight and medications all interact to affect their blood sugar. I also supply the physicians with this information to help them with disease management. There is no current health structure in place providing this service in my town—just me.

In asthma, it is well recognized that patients experience far more symptoms and illness than necessary. This isn’t necessarily an issue of access to medications. Unfortunately, this is more often due to misunderstandings or beliefs about how medications work, how they are to be used and what actually constitutes good control. I have selected patients from my practice for an intensive assessment that explores their knowledge, their beliefs and their attitudes about their condition. I will be running a program like this in my local physician’s office next month. I do these programs because the science tells us that patients won’t change their behaviours because we tell them to, but rather they need to be engaged to change on their own. This is more effective when working with someone they know and trust.

The increased time I spend interacting with patients is supported by the work of the pharmacy technicians and other staff in my pharmacy. They are extra pairs of hands to make sure the work in the pharmacy gets done. They are extra pairs of eyes to watch for errors to keep our patients safe. The pharmacy technicians in my practice have taken on more responsibility to allow me to do these

innovative things, and they tell me they are ready to do more in the future. If we do not fix the professional fee and inventory markup, I may lose one or both of my technicians. We need to make sure that pharmacy is represented by the Ontario Pharmacists’ Association to ensure that my pharmacy work environment is secure.

My certifications in diabetes and asthma and the programs I deliver are among the things that are supported in my practice by the revenues we can generate from manufacturers, both generic and brand name. The manufacturers have recognized the value to patients, and that I, as a pharmacist in my community, can best identify the needs of patients. These certifications and programs are the infrastructure I need to build to begin to provide disease management services for my patients.

What I need as a pharmacist from Bill 102 is the ability not only to continue what I am doing, but to do a better job. Bill 102 appears to recognize that pharmacists have much more to contribute to health care. We need to make sure that my association, the OPA, is entrenched in the process of figuring out how I can do that. OPA needs to be an equal member in any pharmacy council because, with all due respect, pharmacists know better than anyone all of the ways we can contribute to health care. As a pharmacist, I need to be appreciated, integrated and compensated.

I am concerned that the government is considering a maximum amount that I can acquire from manufacturers to invest in providing services to my patients. In effect, I may have to tell my asthma patients that I can no longer provide programs for them because there’s only enough left for my diabetes patients. Of course, it is possible that there will not be enough left for even that. If you limit the amount I can reinvest in caring for my patients, you limit the energy, enthusiasm and innovation that our health care system needs if it is going to effectively help patients in a system that will have greater demands in the future.

If the government fails to recognize the net difference between what we receive now from all forms of compensation and what Bill 102 prescribes for the future, the numbers state that my pharmacy will no longer be in business, which of course eliminates all of the good work that I’ve been trying to do.

I trust that the government will do the right thing. The government must, in return, trust that pharmacists know better than anyone what skills and services they can bring to serve their patients and their communities. We need Bill 102 to develop and assert this trusting relationship between government and pharmacists by entrenching the Ontario Pharmacists’ Association in the pharmacy council. We need to be able to access tools, services and investments from drug manufacturers to advance our profession and improve the quality and availability of health care. We need to fix the professional fee and inventory markup to support the everyday dispensing of medications and professional counselling provided by pharmacists and supported by pharmacy technicians and other staff. My patients matter, and we need to have Bill 102 recognize that. Thank you for your attention.

The Chair: Thank you, Mr. Burns. We have about a minute per side, beginning with the PCs. Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. You've mentioned here quite a few things that have been mentioned quite frequently, I would say. There are actually a couple of groups that are—I'm not sure what the relationship is. The Ontario Pharmacists' Association, Marc Kealey and that group, have presented. They kind of represent the pharmacists, or most of them, I gather. Then there's another group, the coalition group. Which group do you think has the more informed voice about the specifics and the need for the small pharmacist to be heard here? The large organizations seem to be being heard by George privately. Do you understand what I mean?

Mr. Burns: Yes.

Mr. O'Toole: That's what worries me.

Mr. Burns: The pharmacy I practise in, I guess you would call it a small-town, neighbourhood pharmacy. But I believe that OPA does have my best interests at heart. I believe they represents pharmacists first, no matter where they practise. As a profession, we have to get together to work with the government. We need to solve a lot of the problems in health care that I think pharmacists can help solve.

The Chair: Thank you, Mr. O'Toole. We'll move to Ms. Martel of the NDP.

Ms. Martel: Thanks, Ken, for coming from home today, because that was a long trip.

Mr. Burns: A six-hour drive.

Ms. Martel: Yes. I want to focus on your comment that, "If the government fails to recognize the net difference between what we receive now from all forms of compensation and what Bill 102 prescribes..." you "will no longer be in business." Do you feel confident about making that statement? Do you want to add anything to it?

Mr. Burns: Yes, I do. I've got the numbers today, and just to give you an idea, the things we're talking about, the allowances from manufacturers amount to \$64,000 in my pharmacy and the net profit of the pharmacy last year was \$32,000. So I think the math is pretty simple from that.

The Chair: Thank you, Ms. Martel. To the government side. Ms. Wynne.

Ms. Wynne: Thank you very much for making the trip here today. I guess what I want to do is, I just want to reinforce what we've said before in these hearings, that it is not the intention of the government to put you or any other small pharmacist out of business. That's not the intention. We're trying, with the 8% guarantee, the markup, the cognitive fees, the dispensing fee and then the education allowance within that mix, to make your business viable. That is certainly our intention. Can you just comment on that? Is there anything further you want to add? As I said, working with you and working with OPA, it is our intention to make your business viable. Have you looked at the OPA recommendations?

Mr. Burns: Yes, I have.

Ms. Wynne: Okay. And you're supportive of those, or is there any one is particular that you want to talk about—

The Chair: Mr. Wynne, I will have to intervene there. Mr. Burns, you're welcome to confer with any member privately afterward. We thank you, on behalf of the committee, for your deputation.

1710

ERINDALE MEDICAL CENTRE

The Chair: I would now invite our next presenter to come forward: Mr. Emad Nossier, owner of the Erindale Medical Centre. Mr. Nossier, as you've seen, 10 minutes in which to make your combined presentation. I invite you to begin now.

Mr. Emad Nossier: Thanks for giving me the chance to be present here to give you my point of view, being here as an Erindale pharmacy and supported by a group called the IPO, the Independent Pharmacists of Ontario.

With Bill 102, we see that we're going in the direction of dumping of small businesses, which I don't think any government would encourage. How is this going? Medium or small pharmacies are selling around \$1 million, on average. What they are making now is equal to about \$33,000. With Bill 102, it would go down to about \$45,000 to \$48,000 negative. This difference was supported by about \$80,000 to \$90,000 of rebates. The difference between the \$33,000 and the \$90,000 was going for operational expenses, leaving the pharmacy with \$33,000 at the end of the year. With minus \$48,000, I don't think there is a new year for this pharmacy.

Larger businesses will be affected as well, but not as much. They will have to control their expenses, but at the expense of patient care.

One of the flags that comes with this bill is, are we going in the direction of the States, to a monopoly of the market? Is it going to be controlled by big chains? And then, God knows how prices are going.

What this bill is introducing, as well, is increasing the dispensing fee by 46 cents. The dispensing fee has been flat for 13 years. During these same years, the inflation rate was 27%.

Markup: Markup is distributed between the wholesaler and the pharmacy because of non-accessibility of the pharmacy to the manufacturer. It ends up that the wholesaler is getting about 70% of the 8%. In which country of the world does the wholesaler get double the retailer? For me, it's strange.

The markup cap didn't make sense, this \$25. I don't know where this bill came up with this figure, but I heard some good news that this might be solved. It solves the smallest problem, but it's a good start for understanding our situation.

I'll go further, to some suggestions and to these demands: the dispensing fee to go up to at least \$10, as has been expressed by different colleagues here, and the markup to be 8% net to the pharmacy. I think that's a very fair request. Which business in Canada, the US or

anyplace in the world makes a return on its investment of less than 8%?

This might cost the government some extra funds. Where can we get these funds? They've already pointed that out. Generic rebates eliminated from the market would account for about \$600 million. Some people might have different figures, but we can be very close. The government is saving \$253 million and then we have \$337 million flying around in the air. We don't know where they're going to be used, because the government has made use of half the rebate while the other is taken off the market from the pharmacies—we don't know where.

Here are some ideas. If I look to the report by the Ministry of Health for the year 2003-04—I don't have the most recent one—it says a lot. The top two therapeutic classes are cardiovascular, or heart products and blood pressure products. If we add to them the psychotropics or central nervous system products and gastroenterology, we would go up to about 50% of the consumption of the cost to the government.

If I go further to the fastest-growing classes, we'll see that the same groups are there. Special drug programs cost the government about \$159 million, with an increase of 10% every year. If we look at these groups that I was talking about, these are what we call maintenance therapy, not acute therapy. Maintenance means that everybody is using them for the long term.

I also found an interesting report by NAPRA, which talks about the cost of medication waste. The original report might be outdated, but in projecting the figures of the waste, it's \$155 million roughly, in the year 2006 in Ontario only. They explain that dosage and drug change, patient death, and improvement of blood pressure control all contribute in part to the waste of these drugs. They recommend that investment in waste reduction programs will be substantially less than the millions in potential drug savings.

There is some more money that the government can look for. The way to do that, I'll put it in this summary: to get a dispensing fee of \$10 and a markup of 8% net to the pharmacy; the resources are \$250 million or the \$300 million of the rebate that we don't know where is going. Also, Mr. Smitherman has offered pharmacists a 20% allowance on the different labels, like educational or promotional. These could be reallocated properly. Then we can go back to the monthly supply to our patients, which is one of the measures that would save on the waste of products. Because of change in medication, doses and so on, patients end up throwing away lots of their medication. If we go back to this, we'll save a lot. It's not an extra dispensing fee expense because the average prescription is \$45, and only \$7 would go to the dispensing fee, so it costs you \$7 but you save the rest for the government.

Finally, please rethink Bill 102. Save everybody. We don't have to save at the expense of just one party. Thank you.

The Chair: Thank you, Mr. Nossier. We have about a minute or so per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation. Twice now I've heard the government members put the 8% markup in the category of one of the benefits that they're giving to pharmacists, and I'm kind of astonished by that because right now we're moving from a 10% markup to 8%, and we're not sure if the 8% is going to be applied after the wholesale price markup, so we could be down to 2.4% as the markup. Do you see that as a benefit for pharmacists under this? Do you want to make some comments?

Mr. Nossier: I think, for any business, nobody can survive at 2.4%. That was unfair, and it developed at a time when manufacturers stopped delivering direct to the pharmacies, so that was the wholesaler role. I don't think that the government can overlook that. The government should guarantee in this bill that the pharmacist has access to the drugs on the formulary list and the manufacturers' list.

The Chair: Thank you, Ms. Martel. We'll move to the government side. Mr. Peterson.

Mr. Peterson: At the present time under the current system, your 10% markup is being eroded by price increases. Is that not the case?

Mr. Nossier: Could you repeat that again, please?

Mr. Peterson: Your total 10% markup is being taken away by price increases from manufacturers and wholesalers.

Mr. Nossier: I don't think so.

Mr. Peterson: You are paying the price increases over top of the formulary price. If they increase the price, it comes out of the pharmacists' hands, so we're going to be fixing that formulary price, guaranteeing it at 8%, so that is an improvement to you, is it not?

Mr. Nossier: The formulary list has to be updated.

Mr. Peterson: Yes, and it will be under our new legislation. Do you understand? When the manufacturer increases the price over the formulary price right now, do you not pay for that?

Mr. Nossier: We are paying.

Mr. Peterson: Exactly. So you're not even making 10%.

Mr. Nossier: No.

Mr. Peterson: So if we fix the pricing and give you 8%, it's an improvement in your situation.

The Chair: Thank you, Mr. Peterson. Mr. O'Toole.
1720

Mr. O'Toole: Thank you very much. You've brought a couple of different points, and I'm going to pose these as questions for the committee, actually, to the researcher. One is on medical waste. I remember some years ago I read a report from Dr. Coombs—I think he's from the pharmacy school here at the U of T—about the same issue of medical waste. I'm asking research to get us up to date on this \$150-million potential. I think it is a huge issue and it ties into the use of cognitive fees etc., using the appropriate amount for drugs and how many

times you see them renewing prescriptions and doctors' fees. The other one is the admissions to hospitals. I've been told here—I'd like to see a report on that—some people have said here that there's a relationship between medical misuse or non-use and hospital admissions. Each hospital admission has a value attached to it, probably \$300 or \$400 or more. Maybe research can see if—

The Chair: Yes. Thank you, Mr. O'Toole. I would like to thank you, Mr. Nossier, for your presentation and submission on behalf of the committee.

Mr. O'Toole, you have a point of order: direction for research, please.

Mr. O'Toole: Yes. I think research needs clarification on that. The two points were the prescription medical waste—there's a report on that.

Ms. Lorraine Luski: Pharmaceutical waste?

Mr. O'Toole: Yes. It's the prescriptive medicine that's wasted.

Ms. Luski: Okay.

Mr. O'Toole: It's about a third of all drugs. Twenty per cent of all drugs are actually not used—my understanding. Also, hospital admissions—we've had two presentations that have told us that there are a lot of admissions because of too much, too little or not enough medication. That's a prescription kind of thing and it's an educational thing that could save money.

The Chair: Mr. O'Toole, I will ask you perhaps to confer with legislative research after these committee hearings just to straighten out precisely the issues you're after.

Mr. O'Toole: I think it would be helpful. Do you understand? It will save money, and that's what this is about.

ROB MODESTINO

The Chair: I would now, on behalf of the committee, invite our next presenter, Mr. Rob Modestino, to come forward. Mr. Modestino, as you've seen, you have 10 minutes in which to make your combined presentation, and your time begins now.

Mr. Rob Modestino: Thank you, Mr. Chair, committee members and guests, for allowing me the opportunity to present to you today. My name is Rob Modestino. I'm an independent pharmacist in LaSalle, which is a small town just outside of Windsor. I'm the pharmacist-manager at Health Smart Drug Store. We have two other locations in the Windsor area.

My pharmacy specializes in patient education in a collaborative practice with the physicians in our building. We actually knocked out the wall between the pharmacy and the physician offices so that we could more easily interact. In my practice, we have provided patients with specialized care in many instances. I have completed the asthma educator program, which allows me to provide special care to my asthma patients.

I am very encouraged by the opportunity to be able to provide and be compensated for professional services which Bill 102 is allowing. This will result in better care

for my patients. I am, however, concerned that if my pharmacy is not financially viable, these professional services cannot be provided.

I have looked at the situation in my location, and Bill 102, if not amended, will lead to a loss of approximately \$120,000 annually. This is taking into account the complete elimination of professional allowances, the decrease in markup, the increase in dispensing fee and the addition of fees for professional services, which have yet to be defined. This means the loss of one full-time pharmacist and one full-time technician. This will now leave me, the pharmacist, absolutely no time to spend with patients or consult with physicians. Patients will no longer receive the specialized and individualized care they have become accustomed to in my pharmacy.

Patient care will definitely be compromised. Also, this will provide me less of an opportunity to provide preventive care to patients. With fewer pharmacists available in my pharmacy, I will not be able to provide programs such as smoking cessation, asthma care, flu shot clinics or other programs. This is a concern for me, not from a personal standpoint but from a professional standpoint as someone who cares for the patients I treat each and every day. Many of these patients will suffer without these added services.

What is also concerning to me as a pharmacist is the lack of clarity of certain aspects of this bill. The bill indicates the elimination of paperwork for special-access drugs such as section 8 limited-use drugs, and quicker access to these drugs for the patient. However, there is no indication as to how this will be accomplished. This change would help me provide better care to my patients by freeing up time to do so. Although this could be a positive for the pharmacy, the lack of clarity surrounding this process leaves me with concerns. As a pharmacist looking out for the best interests of my patients, I need to be assured that the process will be clearly defined and the access to these medications for patients is indeed quicker than it is today.

Pharmacies also need a clear indication of price for these medications. This will be important not just for patients who are covered by the Ontario drug benefit plan, but for all citizens of this province who may need access to these medications.

Being a pharmacist from Windsor who lived through the implementation of the off-formulary interchangeability by the CAW Big Three auto companies, I do have some concerns with the bill as it is written. It is important that Bill 102 be amended to clearly define similar drugs in DIDFA. One of the biggest issues with the implementation of the CAW plan was that there was some variability in the available lists of interchangeable products, creating confusion for pharmacists, thus delaying patient care. For patient safety and enhanced patient care, there must be a clear listing in the formulary of which products are interchangeable, similar to what is currently done with formulary drugs. Listing them in the formulary will not mean that they are eligible benefits on ODB, but it provides all involved, whether they are a physician,

pharmacist or patient, the assurance that these drugs have been reviewed and found to be interchangeable. The bill indicates that OFI would begin upon royal assent of this bill. Unless such a list can be ready by the time the bill receives royal assent, I'm suggesting a delay in implementation of this portion until a proper listing can be developed.

As a pharmacist who has been a member of the Ontario Pharmacists' Association, the OPA, from the time I graduated in 1989, I feel it is extremely important that the committee and the government recognize OPA as the voice of pharmacy. OPA represents all pharmacists and pharmacies. The board comprises independent, industry, chain and hospital pharmacists. OPA needs to be given the mandate by this government to negotiate on behalf of pharmacy. This needs to appear in the bill so that all future governments will also recognize this.

OPA's proposed amendments to Bill 102 hit the nail on the head. The proposed amendments will ensure the future viability of pharmacy. The amendments take into account both the transparency which the government is seeking in this bill and the sustainability of pharmacy which all pharmacists are seeking. In the long term, this translates to a system that benefits the patient not only with better care but also with transparency. The amendments also recognize the importance of the pharmacy council and OPA's involvement in providing input on future policy.

Most importantly, the proposed amendments recognize that pharmacy reimbursement is important. Some system for professional investment from manufacturers in the form of allowances is necessary. The amendments allow for this investment, but also allow for a mechanism to keep the investments transparent through a code of conduct. They also clearly define and differentiate between rebates and professional allowances.

Since the regulations will be an important part of defining the bill, I want to stress the importance of the government working with OPA when developing these regulations. The regulations will be important in providing clarity for all involved. These need to be developed in consultation with OPA in order for the process to achieve the government's objectives. These regulations will cover a major portion of pharmacists' reimbursement, including fees and markup. Therefore, the involvement of OPA is extremely important. All pharmacists, through OPA, need to know what the plans are for draft regulations, timelines and consultation. OPA is willing to partner with the government to provide solutions in development of the regulations. Let them help.

As a pharmacist, I'm willing to make Bill 102 work, with proper amendments. I put my full support behind the amendments being proposed by the OPA. This committee is tasked with making Bill 102 workable, and I feel that with the amendments proposed by the OPA this is possible. At the end of the day, only an accessible, sustainable drug system everywhere in this province will be accessible to the citizens of this province. Pharmacists want to work with the government to improve health care

in this province. We are committed to doing that, both as individuals and as an association, but that can only happen if pharmacies such as mine remain sustainable businesses. Patient care will only improve if we work together to achieve that.

The Chair: Thank you, Mr. Modestino. A minute per side. First to the government.

Mr. Peterson: Thank you very much, Mr. Modestino. It was nice to see you at the OPA's annual conference and hear your contribution to the drug industry and the OPA.

We appreciate your support for the fact we are recognizing pharmacists as front-line health care givers and making it patient-focused. As we go forward with you, your main concern is that we have not delineated these cognitive fees to you. What cognitive fees, professional fees, would you like included that would assure you that you will not be put out of business, that you will be held in good financial esteem?

1730

Mr. Modestino: With the level of cognitive fees being suggested right now, it's not compensating for the suggested complete removal of the allowances. There's a wide range—

The Chair: With apologies, Mr. Modestino, we'll have to offer the floor to the PC side.

Mr. Jackson: Rob, good to see you again. As a past president of OPA, your input is appreciated.

Earlier today, OPA suggested a dispensing fee more in the neighbourhood of \$11. I've asked a couple of the drug manufacturers whose rebates are being eliminated what a fairer fee would be, and they certainly figure that \$9.50 or \$10 is well in order. Would you like to comment on that? I'm concerned that the cash-paying customer continues to subsidize the ODB in this province, and you get caught in the middle with these fees.

Mr. Modestino: The current studies that we have at OPA show that the cost of dispensing is in the \$10 to \$11 range. We are willing to work with the government to do a joint study to prove that these numbers are correct. That's what we're basing our figures on.

Mr. Jackson: Was it shared with the government?

Mr. Modestino: Yes.

The Chair: Thank you, Mr. Jackson. Ms. Martel of the NDP.

Ms. Martel: Thank you for being here today. You've come a long way as well. Let me ask about cognitive allowances not compensating for the promotional allowances—the loss of. That's where you were heading before you were cut off. Do you want to respond in terms of what else besides the increase in the dispensing fee to \$10 or \$11 is going to be necessary to have this fee revenue-neutral, as the minister promised?

Mr. Modestino: All of it has to be looked at. One of the topics that has been thrown around here is the 8%. One of the issues is that there isn't clarity on what that 8% is going to be based on. That's one thing that we've been seeking: clarity as to whether pricing such as the

wholesaler price will be included in the formulary pricing. That's one of the things that we need.

One of the biggest issues we've had with the bill is clarity. We're trying to get clarity and work with the government to get that clarity. Coming up with a figure off the top of my head is just—I cannot do that.

The Chair: Thank you, Ms. Martel, and to you, Mr. Modestino, on behalf of the committee.

PRESTON MEDICAL PHARMACY

The Chair: I would invite now our next presenter, Mr. Brian Hummel, owner of the Preston Medical Pharmacy. Your written materials have already been distributed. Mr. Hummel, your time begins now.

Mr. Brian Hummel: Thank you, Mr. Chair, committee members and guests for this chance to speak on Bill 102 and its ramifications for my business and patients. My name is Brian Hummel, and I'm a pharmacist-owner of Preston Medical Pharmacy in Cambridge. I've been a pharmacist for 27 years and owner of my own pharmacy for the past 20 years. I was educated right next door at U of T, where I also received my Master of Business Administration after graduating from the faculty of pharmacy. I presently sit on six different regionally based, health-care-related committees in the Waterloo region.

I run an independent pharmacy that interacts with over 200 patients each day. Preston Medical Pharmacy derives 100% of its income from medications and home health care supplies and equipment. I employ 40 well-trained, loyal but underpaid employees. Preston Medical specializes in home infusion, palliative care, diabetic training and compliance packaging. We're one of less than 30 home infusion pharmacies in Ontario, with antibiotics and cancer pain pumps making up the majority of our infusion volume.

Preston Medical Pharmacy works daily with various departments of the Cambridge Memorial Hospital, the Grand River Regional Cancer Centre, the Waterloo regional CCAC and Lisaard House, which is our regional hospice. We help to keep patients out of hospital to receive their treatments at home. Cambridge is an underserved area, with over 25,000 of its residents without a family doctor.

All health professionals realize that our health care system is currently unsustainable, including our drug program. I applaud the government for making an attempt to improve the system after extensive fact finding.

Here's my story. Over the last 20 years as a pharmacy owner, I have seen my gross profit fall from 40% to 20%. This has been a result of four main factors:

- no government fee increase for the last 13 years;
- the rapidly increasing prices of new medication; for instance, home infusion prescriptions average over \$380 each;
- shrinkage of the legislated 10% markup due to unrestricted price increases by manufacturers; and

—industry's switch to wholesale distribution, which adds about 5% to drug acquisition costs for pharmacies.

As in any business, my expenses also have increased every year. It currently costs over \$11 to dispense a prescription at my facility. This is before my full salary, any return on investment or taxes. Both the foregoing shortfalls have been covered in the past by promotional allowances. I look forward to the wider use of generics and to the fee increase. After 13 years, that will still be one of the lowest in Canada. Enforcement of drug prices is also welcome after all these years. What the whole profession is excited about is the chance to finally be providing expanded services, which they have been long trained for, such as medication audits and disease education and management. Unfortunately, dollar-wise, this will probably be a break-even situation in the short term, because we will need more staff to take on these new roles while continuing to serve our current patients.

For pharmacists to be able to provide extended patient services, the province requires a viable pharmacy industry. Unfortunately, this bill is not revenue-neutral. The Preston Medical Pharmacy will gain \$14,000 in new fees but will lose \$7,000 in home infusion alone, with a 2% mark-up reduction. With \$150,000 lost in promotional support—and this is assuming a 20% cap on allowances—I'll be forced to cut up to \$143,000 of staff wages and patient services.

The chart in front of you lists the anticipated service reductions and their effects on my patients. Most of them you've heard over the last two days, so I will zero in on a few that may be unique to home infusion pharmacies.

Preston Medical Pharmacy will reduce its pharmacists' 24-hour on-call service back to 12 hours, as per our CCAC contract. Any cancer patients whose pain pumps run dry, malfunction, leak or even run out of batteries between 9 p.m. and 9 a.m. may need to go to the emergency department, possibly by ambulance, to keep their pain under control until they or their nurse can contact us the next day.

During the past few years, we have reached 99% compliance with the USP 797 infusion standards coming out of the United States. This has cost thousands of dollars. None of the hospitals in our region have attempted this yet because of funding difficulties. Now we have to lower our standards below best practices to save the cost of extra IV rooms, sterility and technician training that are required by these new standards. These standards were put in place after patient deaths from infection, the result of a lack of sterility in some home infusion products in the United States.

Presently, when Preston Medical Pharmacy doesn't have an infusion medication in stock, it means an extra visit to the emergency department for the next dose or an extra day in hospital for the patient until we can get the medication from our suppliers. This will happen more often as a result of this bill.

If I am forced to work more hours in the pharmacy, I will not have the time to work the approximately four hours a week I now volunteer on the various regional health care committees.

Elinor Caplan recommended that all CCAC providers become certified. The initial certification process has cost two of my colleagues over \$100,000, with ongoing costs of \$10,000 to \$20,000 per year. I will not be able to pursue this without funding from some source.

I hope this committee realizes that none of the listed services or quality control standards our patients now enjoy are government mandated or funded, but this government bill will be the reason for their demise. These services will be missed and will have consequences on the health of Ontarians, on wait times and on patient access to health professionals.

I am fortunate to have a large, established pharmacy practice. Two smaller clinic pharmacies very close to me are not so lucky. If they fail, my own business may not suffer, but as I learned in business school, less competition is not good for employees, patients or the taxpayer. I remember not so long ago when the government of the day thought we had too many nurses and physicians. Look at the results of that decision.

The main point I am trying to make is that if this government is truly serious about getting pharmacists more involved in patient care and education to take the stress off of other health professionals and the system as a whole, they cannot cut our funding. You cannot start a new business model without investing in it first. I'm not opposed to this bill, but amendments with regard to generic allowances, fee increases and allowed markups all need to be addressed. This will enable pharmacists to be in a position to contribute more to the health care system, as suggested by so many policy experts and politicians across the country in the last few years. I hope this government, in working with the OPA, can move forward carefully on a fair, innovative pharmacy model for Ontario.

Right now, there is no incentive to get patients off medication; there is tremendous waste in the system; rational, cost-effective prescribing has a long way to go; and the consumer has no idea of how much the taxpayer pays for their medications. Hopefully, by continued dialogue with the OPA and pharmacists who work in the system every day, things can be improved.

In the past, Preston Medical Pharmacy has had the privilege of helping to train new pharmacists from the University of Toronto with the help of promotional allowances. They are certainly ready for the challenge of additional patient services, such as monitoring warfarin levels, doing home medication audits, professional detailing to physicians to get the real story—not the brand story—and smoking cessation programs. None of this will happen without a viable pharmacy infrastructure to support them.

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After 27 years, one of the things I'm most proud of is that over all these years, in every opinion poll I've ever seen, pharmacists have been ranked number one as the most trusted profession. The people of Ontario believe what we tell them and trust us. I hope this government will as well.

I'd be happy to answer any of your questions now or at a later date. Thank you for your time and attention.

The Chair: Thank you, Mr. Hummel. We have about 30 seconds each. Mr. O'Toole from the PC side.

Mr. O'Toole: Thank you for your presentation and for your vision of the profession. I hope that what you say is true, that they do work with the OPA and make amendments. It's a critical part of the health care dilemma, and the potential underuse of pharmacists, I think, is one of the good parts of this bill. I hope they listen to you. That's all I can say.

The Chair: Thank you, Mr. O'Toole. Ms. Martel.

Ms. Martel: Thank you for driving here today from Cambridge. I just want to focus on one point: your saying that the loss on infusion products alone is \$7,000 with a 2% reduction in markup. Do you want to clarify that for this committee?

Mr. Hummel: Luckily, the way the infusion products work at ODB, their program doesn't—it believes what we tell as our true cost, so we always get our 10% on IVs, which we get on no other products. We get more like 2% or 3%; I'm not sure what the exact number is. But on IV products, we do get 10%, luckily. So I can look at exactly how much I'm going to lose, and it's \$7,000 for one year, based on just that reduction from 10% to 8%.

The Chair: Thank you, Ms. Martel. To the government side: Dr. Ramal.

Mr. Ramal: Thank you, Mr. Hummel, for your presentation. I want to thank you on behalf of our government and the people of Ontario for the job you do by serving many people in a rural area. I want to talk about something you mentioned. I know that a lot of Ontarians, all Ontarians, trust pharmacists. We also do as a government. That's why we're bringing this bill forward, in order to have some clear understanding of the relationship between pharmacy and the government.

The Chair: Thank you, Dr. Ramal, and thank you as well, Mr. Hummel, for coming forward and for your deputation today.

CANADIAN DIABETES ASSOCIATION

The Chair: I'd invite now on behalf of the committee our next presenters, from the Canadian Diabetes Association: Karen Philp, executive director of public policy and government relations, joined by Gary O'Connor, executive director of the Ontario region. As you've seen the 10-minute protocol, I'd invite you to begin now.

Mr. Gary O'Connor: Thank you, Chair, and committee members for inviting us to speak in support of Bill 102 and to recommend your consideration of a few amendments. I'm Gary O'Connor, area executive director responsible for Ontario. Here with me today is Karen Philp, executive director responsible for developing our pharmaceutical public policy and policy development in general, nationally and in Ontario.

The Canadian Diabetes Association represents more than 11,000 members in Ontario, including Ontarians

living with diabetes, the families affected by diabetes, diabetes researchers, endocrinologists, doctors, pharmacists, nurses, dietitians, dentists, diabetes educators and other health professionals involved in diabetes care across the province. From this broad perspective, we're here today to tell you that for more than 800,000 Ontarians living with diabetes, the current pharmaceutical policy and drug system does not work. That is why our association encourages members of this committee to approve this bill, with minor amendments.

Dr. Karen Philp: I'm here today to say that the status quo doesn't work for Ontarians living with diabetes. You need to do something. Of the 17 diabetes medications approved for sale and approved by Health Canada as safe and effective, only five are available in Ontario at this point in time. That's even lower than Prince Edward Island. There is a major problem here for people with diabetes, and we're hoping and relying on you to fix it.

We think the current structure fails the majority of Ontarians who rely on medications, and we think that Bill 102 will make a real difference. That's why we support it, for the most part. It's a significant step forward, in our view, not only in Ontario but also across this country, and will be leading the way in what we hope will be reform of the common drug review, particularly in the creation of greater transparency and public involvement.

I'm not going to go over our paper that we provided you. I hope you take some time to read it. I would like to spend a couple of minutes, because I know you're all probably getting a bit tired and it's late, outlining our concern.

Our concern is that the process for the appeal of a decision on the listing of a medication on the provincial formulary remains unclear. This is a problem in other jurisdictions across Canada, and we would encourage you to look at how Ontario might amend that.

While we have complete confidence and trust in the current leadership of Ontario's drug system policy, increased transparency can only enhance the broader public support for this legislation and for the decisions of the executive officer in the future. For example, Bill 102 could enshrine an independent process for a final appeal of decisions on formulary listings that includes individuals not engaged in the initial recommendations to the executive officer.

Three individuals, including at least one practising clinician—and we think it's very important that a practising family doctor be part of the appeal process—could, for example, be nominated by the citizens' council to hear an appeal from industry and be appointed by the Minister of Health when required. The appeal should be accepted based on scientific and economic evidence only, and could be funded from the executive officer's annual budget if successful and from the organization or company making the appeal if unsuccessful.

The recommendation on an appeal could be reported directly to the Minister of Health for consideration and implementation, as well as posted publicly within six

weeks of the recommendation being made to the Minister of Health. We think this would increase transparency in this legislation, which we wholeheartedly support and, again, encourage you to pass as quickly as possible. Thank you.

The Chair: Thank you very much. We'll now move to the NDP side. Ms. Martel.

Ms. Martel: Thank you very much for being here today. We've met on other occasions. I would hope that the bill is going to be better for patients, particularly those you represent, but I've got to tell you, I look at this bill and I see all of the areas where there are absolutely no details on what's going to happen, and I have to wonder what we're buying into.

For example, you said we need a new section 8 process. There isn't one defined in the bill, so it's hard to say if it's going to be better or not because it doesn't appear anywhere in this bill. Secondly, we should have two additional members on the new committee to evaluate drugs; that's not in the bill either. We should have the citizens' council; there's no provision for it in the bill. We should have the innovation fund; there's nothing in the bill to provide for that. We should have new breakthrough drugs—no definition of "breakthrough," of course. We should have a rapid process for drugs to get on the formulary; that process doesn't appear in the bill.

So from my perspective, I don't know what we're buying into and I don't know if what we're buying into is going to be better than what we've got in place now. I'm not at all confident that we are, given that there are no details with any of these. Maybe you've had some discussions with some other people that would tell us how some of these things are going to work that we as opposition members haven't been privy to. What leads you to believe, when there's so much that's not in the bill, that what's going to replace it, which we haven't seen, is going to be that much better?

Dr. Philp: One, those issues are not in the current legislation either—

Ms. Martel: But they could be.

Dr. Philp: No, but they're not. The second thing is that you cannot tie the hands of future governments; we understand that. Legislation is a framework, from our perspective, on which government hangs its policy. From our perspective, it would be great if those things were in the legislation, and even if they were, government could actually change that at any time in the future. What we want to do is put in the processes. We think the citizens' council creation—

The Chair: With apologies; thank you, Ms. Martel. We'll move to the government side. Mr. Peterson.

Mr. Peterson: Thank you for dwelling on this concept of transparency, because the whole issue is now, if we want to change the formulary, if we want to change the definition of "breakthrough," we have to go through cabinet, which forces it into secrecy. One of the issues is: How much do you put in legislation and how much do you put in policy and regulation? Our attempt is to make all these processes open and transparent and observable.

We're throwing open the process. In so doing, yes, it's creating confusion for people who have no faith in people who administer. Some people are saying that we're destroying our accountability; well, all of these committees would report through to the deputy minister and the minister and we would be politically accountable—much more accountable than we are now in the secrecy of cabinet.

So I appreciate your faith in this. Can you give us your sense of where you would see the most interesting part in terms of better defining some of these areas to give people more faith in the area?

Dr. Philp: I think the citizens' council is an excellent opportunity to increase public understanding of pharmaceutical policy and the problems in Ontario. Let's face it: There are serious and difficult decisions that have to be made, and you do a trade-off in any public policy decision. Government has a hard time of it; we recognize that. But by bringing in the people who are actually living with the results of those decisions, I think you'll create greater understanding not only of what was taken in the decision-making but also an understanding that, yes, we're taxpayers; we're all taxpayers. We have hard choices to make here. And the tradeoffs? "Yes, okay. I'll make that trade-off." I think that will create greater support for this legislation.

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The Chair: Thank you, Mr. Peterson. To the PC side. Mr. Jackson.

Mr. Jackson: Have you been assured by the government that the announcement made in the last budget for additional funding for diabetes services is contingent upon the approval of this bill?

Dr. Philp: Absolutely not. We start—

Mr. Jackson: Thank you. Have they informed you in any fashion that the funding to pay for these drugs will come from the drug budget?

Dr. Philp: No.

Mr. Jackson: They have not. Can you tell me: Do you support a disease management strategy for diabetes in this province and in this country? If you do, how can you separate the disease management strategy from the independence of this new stand-alone, unelected, unaccountable drug secretariat?

Dr. Philp: Because for the first time ever, the Canadian Diabetes Association was invited into a consultation. We made our presentation, and our recommendations were reflected in what was reported by the minister at the time the announcement was made.

Mr. Jackson: With all due respect, a whole host of individuals have made the exact same statement but then have said that all of the input that they provided didn't find its way into this legislation. Many of the points you've raised still have not found their way into this legislation. I accept that they're of importance to your agenda and I support that. However, what you may have discussed in consultation hasn't been reflected in the legislation.

The Chair: Thank you, Mr. Jackson, and thank you as well to you, Ms. Philp and Mr. O'Connor, for your

deputation and presence on behalf of the Canadian Diabetes Association.

ONTARIO CHAIN DRUG STORE ASSOCIATION

The Chair: I would now invite our next presenters: Ms. Rita Winn, spokesperson, and Ian Lording, member, of the Ontario Chain Drug Store Association, and colleagues. I would invite you to begin now.

Ms. Rita Winn: Thank you for the opportunity to appear before the committee. My name is Rita Winn. I'm a practising pharmacist, general manager and COO of Lovell Drugs, a pharmacy chain that operates in Ontario. I am speaking today on behalf of the Ontario Chain Drug Store Association, which represents 80% of all community pharmacies operating in this province. With me today are Ian Lording, our director of pharmacy services with the Great Atlantic and Pacific Company of Canada, which is a division of Metro Inc. and a member of OCDA; and Art Ito, director of pharmacy services for Hudson's Bay Co.

The OCDA is fully supportive of the Ontario government's initiative to reform Ontario's drug system. We believe that Ontario's drug system does need increased transparency, accountability, effectiveness, and improved patient access to needed care and medicines. We also support the need to manage costs in the system.

We contributed in good faith to the consultation process by the Drug System Secretariat. We offered some very concrete solutions and welcomed changes that would improve health outcomes and better manage drug costs. There is no doubt that the role of prescription medicines in health care is increasing and will continue to do so as the population ages, which presents enormous challenges to managing costs. At the same time, it increases pharmacists' levels of patient service and care. Pharmacists are a key resource in health care cost control on the front lines in appropriate medication use and in patient education.

OCDA is pleased to see the recognition of this role. The government's policy announcements, although not integrated into Bill 102, indicate that for the first time, pharmacists will be recognized and compensated for cognitive services—care that goes far beyond the dispensing of medications and improves patient health outcomes.

However, we take exception to two general areas of Bill 102. The first is the elements that pose a great threat to the economic viability of pharmacy and, as a result, health care for Ontarians. In addition to being a health care profession, pharmacy is also a business. It is not sustainable or even possible to demand more from pharmacists while drastically reducing the funding that makes it possible for them to maintain and expand operations and care.

If implemented as currently written, Bill 102 and the Minister of Health's policy statements would have a serious adverse impact on both the practice and the

economics of pharmacy in Ontario. Based on calculations provided by the government, the Ontario Pharmacists' Association and our members, we estimate that the total package of reforms provided in Bill 102 will reduce pharmacy's funding and reimbursement by at least \$500 million per year. This figure could escalate if the policies are adopted by private payers.

The second area is the elements that are not written with sufficient detail so that the impact on pharmacy is either not clear or subject to further adversity in the drafting of the regulations. Bill 102 does not directly implement many of the changes the government has announced it intends to make to the drug system. Some of the changes may be implemented through regulations and policies which have yet to be made public. Since Bill 102 was tabled, there has been a high level of confusion among pharmacists and the public with respect to provisions that are part of the legislation and policy provisions that the minister has announced as government intent. We are offering a series of proposed amendments to the legislation that will address these two areas. In the handout today, you saw a thicker document, which we can't cover in the 10 minutes. Those are our suggested amendments.

While the government policy proposals, if and when implemented, do provide for increased revenues, these provisions cannot offset the grave and profound financial loss that will be brought about by this legislation. As a result, some Ontario pharmacies will be forced to reduce store opening hours, lay off pharmacy staff, increase dispensary wait times and reduce services and care for patients. Many of these will be in areas of the province where community pharmacy is the only source of health care in the community. Access and care will be further jeopardized if some of these pharmacies are forced to close.

From a chain drugstore perspective, this means that many patient care services could be in jeopardy. Chain drugstores have a unique ability to provide many value-added, innovative programs and services: information and advice about important health topics; medication reminder services; conducting detailed medication reviews to ensure patients' drug therapy is optimized; conducting patient medication reviews for physicians and providing referrals to other health care providers; clinic days; disease-specific patient consultations; and counselling on over-the-counter medication.

It is the potential adverse impact on patient care that is the most disconcerting aspect of Bill 102. This will only intensify as pharmacy chains will have to focus on increasing the volume of business in order to just survive. We are concerned that this situation will actually cause a significant setback to the practice of pharmacy. We have seen this happen in the United States: Flawed reimbursement models have led to a steep decline in patient care.

The OCDA has developed a number of proposed amendments that are documented in the written presentation we respectfully present to the committee today. I

will spend the remaining time providing a summary of our overall recommendations. Briefly, to ensure that the viability of pharmacy is not negatively affected by financial loss and that there is transparency and ethical standards in place, we are proposing that manufacturers be permitted to provide professional allowances, and that the definition of a "professional allowance" is not a rebate but is rather "a benefit in the form of money provided by a manufacturer in the ordinary course of business." We propose that professional allowances can be provided only to companies and not to individuals, and that manufacturers who provide the professional allowances must disclose them to the executive officer of the province.

We would like to emphasize that rebates, or allowances, are an accepted standard practice in most retail businesses. We share the government's concerns that they be used for the purpose intended. The minister has said that there is a need for professional allowances in a free marketplace, provided that they are used for appropriate services and in a transparent manner and only to provide benefit to patients; for example, innovative programs, patient care services, pharmacists' education, and technology. Therefore we propose they be legislated and be permissible in a transparent manner, and that no allowable limits be placed on our ability to collect allowances. Limits on allowances may restrict pharmacies' ability to deliver innovative health care to Ontarians.

The allowances agreed to between the parties represent a significant portion of the overall funding available to pharmacy for value-added services for patients. Professional allowances are vital because there has been no adequate change in the sources of funding and reimbursement available to pharmacy for years. Most provinces, including those in Atlantic Canada, have a higher dispensing fee than Ontario's proposed \$7 fee.

1800

The Ontario drug benefit program has the distinction of being the only regressive publicly funded drug plan in Canada, and it has been that way for many years. The program has never been able to keep pace with the rising cost of pharmacy operations in our stores. The only way that Ontario pharmacies were able to offset rising costs and provide more patient services over the past 16 years was negotiating professional allowances with generic manufacturers. Even with the increase of a 46-cent fee proposed in Bill 102, the losses incurred from the prohibition of allowances will not be offset.

The other proposed amendments are intended to ensure that some elements are legislated and not just left up to regulations, such as requiring, by legislation, establishment of a pharmacy council and a citizens' council; clearly setting out the powers of the executive officer to negotiate fees with the pharmacy council; and setting out a regular and rigorous process to review and negotiate the economic model.

It is imperative that the government of Ontario make appropriate amendments to Bill 102 before the passage of this legislation. We would like to offer this committee,

the Legislature and the Minister of Health our organization's co-operation and support in modifying Bill 102 to achieve the stated objective of establishing a more transparent and effective drug system for Ontarians.

I thank you for your consideration of our points.

The Chair: Thank you very much. We really have very minimal time; just a few seconds for each side. We begin with the government side. Mr. Peterson.

Mr. Peterson: Are you members of the OPA and the Ontario coalition of pharmacists?

Ms. Winn: I personally am a member of the OPA. The OPA is an individual pharmacist membership. I believe that the three people sitting here are members.

Mr. Peterson: Do you support the OPA's recommendations as well?

Ms. Winn: I do.

The Chair: Thank you, Mr. Peterson. The PC side: Mr. Jackson.

Mr. Jackson: Thank you for your presentation. Earlier today, the OPA picked a number closer to \$11 for the dispensing fee. Is that closer to what you feel is appropriate for your chain stores?

Ms. Winn: That is closer to what we feel would be appropriate.

Mr. Jackson: And is that comparable nationally, in terms of any kind of comparison, since many of you are national providers?

The Chair: Thank you, Mr. Jackson. Ms. Martel?

Ms. Martel: Thanks for being here, and thank you for the definition of "professional allowance"—that it's not a rebate, because "rebate" has become kind of a dirty word during this process, especially when the word "hidden" is in front of it. Do you know if the government gets any rebates from any source when it purchases drugs?

Ms. Winn: That's a good question, actually. I believe they do get rebates into hospitals, and certainly by different companies funding meters and equipment. It's just a natural and business process for one manufacturer to be allowed to provide service that goes along with what might be equipment—

The Chair: Thank you, Ms. Martel, and thanks to you as well, Ms. Winn, Mr. Lording and your colleague for your deputation and presence on behalf of the Ontario Association of Chain Drug Stores.

DELTA COMMUNITY PHARMACY

The Chair: I will now welcome our final presenter of the afternoon, Mr. John Taylor, owner of the Delta Community Pharmacy. You've seen the protocol. You have 10 minutes, beginning now.

Mr. John Taylor: Good afternoon. I appreciate the opportunity to speak to the committee. I want to indicate to you, first and foremost, that I'm very supportive of the Ontario drug benefit program. I believe it to be a wonderful benefit and resource for the citizens of Ontario. Second, I'm also very supportive of the notion of provincial regulatory management. Our Ontario Legislature is

responsible for the ongoing development and sustainability of the overall program.

I do not support Bill 102 in its present form. I am another one of the many who support the amendments proposed by the OPA, of which I am a member, and the pharmacy coalition, of which I am also a member.

Three key points: I believe there must be the ability for ongoing manufacturer allowances at the store level. These are currently the difference in profitability for many stores. I recognize that they are skewed and need to be corrected as part of an overall reimbursement adjustment.

Second, I believe that the pharmacy council must have legitimacy and authority. Much work needs to be done before legislation is finalized and enacted, and ongoing changes and revisions will be critical in the years ahead.

Third, the initiative in recognizing cognitive services is significant and worthy of support, as is the increase in professional fees. We don't want to lose sight of the positives in Bill 102.

That's where I'm coming from. But what I'd really like to do in the few minutes we have is tell you a little bit about my store in Delta. I'm wondering just who might know where Delta is. That's the purpose of the maps. If you want to just open it up, please, and look around Kingston.

Ms. Martel: Which side? I'm from the north, so—

Mr. Taylor: Find Kingston, then find Gananoque and go north. You'll find Lyndhurst and the beautiful lake country in eastern Ontario. Delta is a little community of about 350 people. Sorry; I wanted to mention too that the maps are provided free of charge by the Ministry of Transportation. There is no copay—no \$2 or any copay for the maps.

Unless Bill 102 is fixed, Delta Community Pharmacy will probably close. At best, it is marginally profitable now. It first opened in May 1996, 10 years ago. While it took some time, it has been embraced by the community. It's not really my store. I operate it, but it belongs to the people of Delta. They worry more about the store's viability and sustainability than I do.

Delta has approximately 350 people; I estimate maybe 1,000 in total in the catchment area. It's a unique concept/vision sort of store. I don't think there's anything like it in the province or possibly in the country. It's 200 square feet. I brought some pictures and I know it's hard for you to look at them, but maybe when we're done you can have a little peek at what the store looks like.

It's open from 9 till 12 noon on Monday, Tuesday, Thursday and Friday. That's it: 12 hours a week. I have a great relationship with the people in the community, with the patients and with the doctors. The fax and the phone answering service run 24/7, and that works very, very well for the store. It's not about me. This whole issue is more about the people in Delta and what they will do.

If you look on your map, Delta is sort of in the middle of nowhere. Off to one side is a little community called Athens. They have a drugstore—just one drugstore; a small independent. It could probably close too. If you go the other way, there's the little community of Elgin. They

have a drugstore that probably will close. Seeleys Bay, a little to the south, has a drugstore. It probably will close. The people in this area are looking at Westport, Gananoque, Kingston, Smiths Falls and Brockville as their sources of medical supplies. I don't think that was ever intended in the legislation. I think it's a circumstance that we can collectively correct, and that's really what I'd like to see us do.

I wish to recognize the support of all my colleagues right across the province. We've all made a tremendous effort to appear before this committee and tell our stories. I congratulate them all.

I wish to thank you for our attention. I really do appreciate the opportunity to be heard. I wish to emphasize just how important this issue is to me and my community. It's been a long drive this afternoon—a beautiful day, but a long drive—and it's going to be a long drive home. But I remain optimistic that it will be worthwhile, and I leave that part to you.

Thank you, and I'd be pleased to take your questions.

The Chair: Thank you, Mr. Taylor. We have about a minute or a minute and a half each, beginning with the PC side. Mr. O'Toole.

Mr. O'Toole: Just briefly—Mr. Jackson probably has one—you have 200 square feet, and you're open 12 hours a week. What's your rebate per year?

Mr. Taylor: Oh, gee.

Mr. O'Toole: You don't know?

Mr. Taylor: Not offhand. Maybe it's \$12,000—no, maybe \$15,000.

Mr. O'Toole: Is it half your revenue or less?

Mr. Taylor: Oh no, much less than that.

Mr. O'Toole: Is it 30%?

Mr. Taylor: In my store it would be anywhere from zero, depending on the manufacturer, to maybe 30%.

Mr. O'Toole: So it's really not that important?

Mr. Taylor: It's significant. For sure, it's significant.

Mr. O'Toole: What we've heard is that it is the most important thing in this whole discussion. Without it, all the small stores close. That's what we're told.

Mr. Taylor: Well, sir, it's all about total gross revenue, basically. If the fee is adjusted and the rebate goes, then maybe there's something there. But it's more a matter of how much money the store receives. The economy of the dispensing business is what this is about, it seems to me. It's much more than rebates.

Mr. O'Toole: I know it's more than that, but they're telling us that the coalition is saying that without these, they're closing—period, end of argument. That's what they're saying. Absolutely 80% of the presenters have told us—and some of them are sitting here. This gentleman here is going to close his store if that rebate is cancelled.

The Chair: Thank you, Mr. O'Toole. Ms. Martel.

Mr. Taylor: Can I—

Ms. Martel: Sure. You can use my time. Go ahead.

Mr. Taylor: The rebates become less important if the dispensing fees are increased, if there are other sources of revenue, all right? The significance of the rebates pales in the whole scheme of things.

Ms. Martel: But if that represents 30% of your total gross revenue—30% of your total gross revenue comes from promotional allowances, or did I misunderstand that?

Mr. Taylor: Not in my little store. My store doesn't qualify for a lot of big rebates. It's a small independent. The stores without relationships, without banners, without corporate offices or whatever are more at risk than those with.

Ms. Martel: Okay. So if there's a change of 46 cents in the dispensing fee, what does that do for you?

Mr. Taylor: Not a whole lot. My store might do 10,000 prescriptions a year, so what's that—\$4,600. It helps.

Ms. Martel: That's not going to take you very far.

The Chair: Thank you, Ms. Martel. To the government side: Ms. Wynne.

Ms. Wynne: Thank you very much for being here and thank you for the map. I think it demonstrates what we're dealing with here. It seems to me that you really get the nub of what we're trying to do here. When you talk about the current rebate system being skewed and that it's about a broader picture of having enough revenue so you can survive, can you just talk a little bit about why you see there is a need for the kind of restructuring we're talking about? You're supportive of the OPA amendments, but what's at the nub of why we need to do this?

Mr. Taylor: Well, it's been being dealt with for too long. The difficulty is in how long it has taken to get us here. I'm not suggesting that what you're considering in Bill 102 is the complete or correct answer, because there are things that the council—I'm not sure what the makeup is, but I'm looking to the OPA and the pharmacy coalition to sort that out. Certainly, the business side of our business needs to be heard and understood. I think that's what these hearings and the stories are all about: trying to explain the impact on our individual stores and communities.

The Chair: Thank you, Ms. Wynne, and thank you, Mr. Taylor, for your deputation today. We'll have to take it on faith that it was a beautiful day, as we haven't seen it ourselves.

There's no further business before this committee. This committee stands adjourned until Monday, June 5, at 9 a.m.

The committee adjourned at 1813.

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Also taking part / Autres participants et participantes

Mr. Cameron Jackson (Burlington PC)

Clerk / Greffier

Mr. Trevor Day

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Ms. Lorraine Luski, research officer
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Monday 5 June 2006

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Lundi 5 juin 2006

Standing committee on social policy

Transparent Drug System
for Patients Act, 2006

Comité permanent de la politique sociale

Loi de 2006 sur un régime
de médicaments transparent
pour les patients



Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 5 June 2006

Lundi 5 juin 2006

*The committee met at 0900 in committee room 1.*TRANSPARENT DRUG SYSTEM
FOR PATIENTS ACT, 2006LOI DE 2006 SUR UN RÉGIME
DE MÉDICAMENTS TRANSPARENT
POUR LES PATIENTS

Consideration of Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act / Projet de loi 102, Loi modifiant la Loi sur l'interchangeabilité des médicaments et les honoraires de préparation et la Loi sur le régime de médicaments de l'Ontario.

The Vice-Chair (Mr. Khalil Ramal): Good morning, everyone. Welcome to the third day of hearings on Bill 102. We have many presenters today. I'll tell you a little bit about procedure. Everyone has 10 minutes. You may wish to speak for the whole 10 minutes, or you can divide it between speaking and questions and answers.

ACTION NEUROPATHIC PAIN ONTARIO

The Vice-Chair: First, we have Action Neuropathic Pain Ontario. Do you want to state your name for Hansard?

Dr. Allan Gordon: I'm Dr. Allan Gordon. I'm a neurologist at Mount Sinai Hospital. I deal with neuropathic pain. This is Rachel Weisz, who is a consumer with neuropathic pain. I'm very pleased that we can speak before you this morning, including to my MPP, whom I've never met, but you'll be hearing from us.

I represent a volunteer organization called Action Neuropathic Pain Ontario. This is a group of physicians, pain researchers, nurses, physiotherapists and consumers who have neuropathic pain, who wish to change the way neuropathic pain is managed in this province and to improve access to treatment. I'm also a member of the Canadian Pain Society, a special-interest group, and also something called the association of pain management directors.

Neuropathic pain is caused by a number of conditions, including shingles, multiple sclerosis, stroke, diabetes, trauma, post-surgery and cancer. It's hard to know how many people have it, but up to a million people in country and perhaps 400,000 people in this province. It can be quite severe. Because of it, people can't walk,

they can't talk, they can't have sex, they can't sleep properly, they're very anxious—not about the last part, Mr. Ramal.

If you can imagine, people with this have pain in parts of their body, which interferes with their lives. It's not just the symptoms, but also there's a huge economic input from this. In fact, it's so debilitating that we've done some studies on it. One study that I'm a co-author on looked at neuropathic pain patients in Quebec, Ontario and Alberta. We found that the three-month cost, both direct and indirect, to the system and to the patient was about \$2,500, which is like \$10,000 a year, if you think about it. So if there are about 400,000 patients in Ontario with neuropathic pain, exponentially that's a lot of money, and only part of that is direct drug cost.

We're here because there are significant issues of how pain management should occur. Pharmacotherapy is an important part of pain management, and we're very concerned about how our patients can get access to medications they need to be treated. Full treatment requires full access to clinics, but also to medication. Interestingly enough, things are not quite as good in Ontario as they are in Quebec. In Ontario, only about 20% of compounds are properly funded, whereas in Quebec, 40% are funded.

The other thing is that there are certain aberrations. I spend a lot of time applying to something called section 8, which is part of the ministry's special access program for medication. Many of our patients are seniors or are on disability, so the only way they can use these medications is to get them funded by the government. There are some anomalies. For a long time, a drug called Gabapentin wasn't funded at all. Now Gabapentin is funded, and a drug called Lyrica, which is approved for neuropathic pain, is funded only in the absence of effectiveness of Gabapentin or something else.

I think Bill 102 promises to change all that, although I think the devil is in the details. We're not exactly sure how it's going to change that. Hopefully it'll change it for the better.

We want to make sure that if there is funding, the funding not be based only on cost, but also on effectiveness of the drug, familiarity with the literature and the evidence, existing practice guidelines, expert opinion, respect for the reliability and reputation of the practitioner making the request, the aspirations of the patient

requiring the medication, and also a sense of compassion and common sense.

Transparency must be maintained at all cost. If reviewers are to be used under the new system, the names should be public rather than confidential. We should know who's reviewing these drugs. We've offered already to act as consultants to this process, my colleagues and I. But also, true consumer input is essential. Question: How can we make sure this occurs under Bill 102?

Before I introduce Rachel Weisz, I want to talk about the fact that the cost of pain medication is only part of a larger system issue. I've left you something that was produced in Quebec. The province of Quebec has recognized that chronic pain is an important condition to look at, to treat properly. This is not on the agenda today and I'm just leaving it more for information than anything else.

Those of us in the academic pain management community wish to work with either this committee or the ministry to improve the lot of patients with neuropathic pain, hoping to improve drug access and also other kinds of treatments. I would ask that Bill 102 be carefully examined, and changed if possible, to ensure that all patients with neuropathic pain have fair access to the medications they need and that their concerns I have mentioned be addressed.

I'd now like to introduce Rachel Weisz.

Ms. Rachel Weisz: I became ill with a severe case of shingles in March 2000. That is over six years now that I am trying to find relief from the debilitating pain of postherpetic neuralgia.

During the first year, I was totally housebound due to the severity of the pain. Later I had epidural injections and when that did not work, I was prescribed OxyContin. Scared of becoming addicted, I searched for other means of relief. I tried biofeedback, naturopathy, alternative medicines; none of them helped.

In 2002, I was accepted for treatment at the Wasser Pain Management Centre at Mount Sinai Hospital. There, Dr. Gordon changed my medication to Gabapentin. I also tried self-hypnosis and laser therapy. After using Gabapentin for close to two years, I become worried about the side effect of memory problems.

In 2004, I heard that some physicians were using a new treatment successfully for pain relief. As I was unable to afford the cost of it, Dr. Gordon made a request to section 8. Since then, there has been a most frustrating and lengthy correspondence of requests, explanations and refusals. Gabapentin is an expensive drug, and when looking at the cost of a new medication, it should be taken into consideration that the expense of Gabapentin will be eliminated. Dr. Gordon graciously obtained the donation of a free dose for me. That provided the proof that it helped me.

I am particularly angry about the way section 8 is disrespectful of Dr. Gordon's qualifications, extensive experience and authority as director of the Wasser Pain Management Centre.

0910

I have two concerns with Bill 102. Will the drive to reduce costs deprive me of the Gabapentin, that is already in a generic form and still expensive? It also creates scary side effects, which the original drug probably does not have.

Will a rapid review of breakthrough drugs eliminate the two-year hassle with section 8 I have just described, or make it even more inflexible? Also, the reduction of paperwork does not guarantee that the restrictive and narrow definitions will not remain.

Pain is not visible like an injury or physical challenge, so please believe me when I say my chances of a normal life have been destroyed. I am just one of a large group of people who deserve to be provided with the relief that is available. Thank you.

The Chair: Thank you very much. We have one minute left. Why don't we give you one minute for one party and then we'll rotate it. Mrs. Witmer?

Mrs. Elizabeth Witmer (Kitchener-Waterloo): Well, I guess there's not much more time than to thank you, Dr. Gordon, and also Ms. Weisz, for coming here today. I understand what you have just said. However, I would say to you that at the present time, there would be nothing in Bill 102 that would mean that the situation that you're experiencing is going to change, because there is no definition of "breakthrough drugs," and we don't know what section 8 is going to be replaced by. Whether or not there's going to be anything done to address your concerns presently—there's no indication that there will be, but I hope the government hears what you've said today. Thank you.

The Vice-Chair: Thank you very much for your presentation.

BAYER CANADA

The Vice-Chair: Now I want to call on Bayer Canada: Philip Blake, chief executive officer. Just so you know the procedure, you have 10 minutes. If you wish, you can speak the whole 10 minutes, or you can divide it. Go ahead.

Mr. Philip Blake: Good morning. My name is Phil Blake and I am the president and CEO of Bayer here in Canada. My colleagues Grant Gunn and Ben Faienza are also with me here today.

I've had the good fortune of spending 27 years involved in the development of pharmaceuticals, the research of pharmaceuticals and bringing pharmaceuticals to patients. I've worked in Japan, I've spent time in Germany, I've worked in the United States, I've worked in the United Kingdom, and now, since 2000, I've been here in Canada. I've observed in all of those jurisdictions the importance of health policy, but also that health policy and the delivery of health care involve highly complex and interrelated phenomena, and if you make a simplistic, simple change in one part of the health care system, you usually see a perverse and unwanted outcome in other parts of the system. I've seen that in all

of those jurisdictions. I'm here today to help Ontario avoid making mistakes.

New Zealand, Quebec, Norway and Australia have all attempted to control drug costs through manipulating the price or the cost to consumers of newer advances to medicines. In all cases, ladies and gentlemen—all cases—the result has been an increase in total costs to the health care system. In New Zealand, even more disappointing, manufacturers ceased the supply of cancer drugs following a rollback in pricing.

Bill 102 will roll ODB prices back to the levels of more than a decade ago. It's very difficult to understand why our government would do this. Not only have companies like mine experienced significant increases in the cost of doing business—and 95% of my costs are people costs. That's the basis of our industry. We're an information-generating industry, and people generate those costs. Those costs have continued to rise, but Canadian prices are already so low that busloads of Americans come to Canada to get access to Canadian prices. So there's something wrong here, something that I think we all need to understand.

Ontarians already have an excellent deal on drug prices. The proposed price reductions are not only bad policy, but by abandoning the current made-in-Canada pricing system—and I have to say, from all my experience, this current made-in-Canada pricing system works very well for Canadians—you will be introducing, fundamentally, an American-based system in Bill 102. That is going to lead to a discriminatory two-tier system where the weak suffer and the strong get stronger, to higher distribution costs—instead of the monies from your taxes going to patients for drugs, they go into the distribution system—and ultimately, to higher costs for all Canadians.

Let me point out the following: Canadian drug prices are currently 9% below the international median. That is, currently you have a great deal here in Canada and in Ontario. Your drug prices are 9% below the international median. When we compare Canada to the United States, US pricing is almost 80% higher. The multi-price system in the United States has led to higher distribution costs, much higher than the low distribution costs that the made-in-Canada solution has led to. This is a complete waste of money. This is money going to middlemen that should be spent on medicines for patients. We clearly do not want to encourage that here in Ontario.

In addition to the policy flaws, there is a jurisdictional challenge to pricing provisions in Bill 102. Pricing in Canada is and will continue to be regulated under the made-in-Canada system of the federal Patented Medicine Prices Review Board. In their recent consultation paper, *Consultations on the Board's Excessive Price Guidelines*, published in May 2006, it is clear that the board is fundamentally opposed to the pricing elements introduced in 102 and claims sole jurisdiction in this area.

In closing, since the proposed pricing regulations in Bill 102 only impact the ODB—Ontario drug benefit—reimbursement of medicines, you should demand that the

government recognize and evaluate the impact of introducing a US-based procurement system on other parts of the system. You need to consider the impact on other provincial plans. What's going to happen in Manitoba, Saskatchewan and PEI when Ontario uses bully tactics and their purchasing power to drive prices down? The prices in the other jurisdictions will go up. How are people without coverage going to manage when the prices go up to US levels, those people who pay out of pocket and the privately insured?

The sponsors of this bill need to answer the following. You have to demand that the sponsors answer the following:

How will a multi-tiered price system in Ontario operate without the emergence of middlemen that drain value out of the system?

How long will it take before the introduction of a US procurement model in Ontario, the DVA model, leads to US pricing in Ontario?

Under the NAFTA, GATT and TRIPS agreements, we live in one common market here. Of course, you'll suck US pricing in as soon as you move away from the made-in-Canada model, which has relied on our solidarity.

Finally, if the ODB uses its buying power for short-term gain, how will the impact occur on the smaller provinces which don't have that buying power?

You need to consider these before you allow Bill 102 to go forward.

But there is a way forward. There is a much more sensible way forward, how we can jointly work in a partnership to enhance the health care provision here in Ontario.

We understand the government need for a drug budget which has predictability and sustainability. That's clear. We understand that. I understand that as a CEO of a major global corporation, because we also need a stable and predictable commercial environment to do our best work. Our best work is bringing innovative medicines to patients to help treat these difficult diseases.

Our needs are aligned. A wise government would take some time to properly understand the impact of the pricing proposals in Bill 102 to avoid these perverse occurrences that we see all around the world when you tinker with pricing without thinking it through. A wise government would take the opportunity of sponsoring a true partnership with our company and our industry.

I thank you very much for the time today to address this committee. Of course, we're here to welcome any questions you may have.

The Vice-Chair: Thank you for your presentation. Ms. Martel, we have three minutes. We can divide it three ways.

Ms. Shelley Martel (Nickel Belt): Thank you for your presentation. I'm interested in the Patented Medicine Prices Review Board. I admit I don't know very much about that. Who sits on that? Do they represent all of the provinces? Do you know how that works?

Mr. Blake: It's a federal-level board that represents the pricing in Canada. It's designed to prevent excessive pricing in Canada.

Ben, do you want to add to that?

Mr. Ben Faienza: Only to say that the appointees on the board are appointed by the Minister of Health.

Ms. Martel: Are all provinces represented?

Mr. Faienza: All provinces, yes.

Ms. Martel: And appointment is by the Minister of Health?

Mr. Faienza: Yes.

Ms. Martel: Thank you.

Mr. Tim Peterson (Mississauga South): Thank you very much for coming in. Are you manufacturing in Ontario?

Mr. Blake: Yes, we do manufacture in Ontario.

Mr. Peterson: Could you give us a little description of your company and just exactly what your activities are?

Mr. Blake: Our company is called Bayer. You probably know us best for Aspirin.

Mr. Peterson: I know the name, but I don't know the details of your operations.

0920

Mr. Blake: We manufacture products for haemophilia, for a whole range of serious diseases. We introduce products for cancer. We have a diagnostics facility. We manufacture in Ontario. We do research and development in Ontario.

Mr. Peterson: So most of your products are covered by the federal patents on drugs? When you talk about these severe price decreases, are you talking about the off-patent pricing?

Mr. Blake: No, I'm talking about the proposed roll-back in prices here in Ontario under Bill 102, which will impact our patented products.

Mr. Peterson: So if these prices are not rolled back but are negotiated with you, as we anticipate they would be, then this would be a suitable way to work with you on them?

Mr. Blake: It's important that our prices are allowed to continue under the PMPRB regulations, which regulate price.

Mrs. Witmer: Thank you very much for your presentation. Certainly, we share your concerns about the impact that this legislation is going to have on companies like yourself. You mentioned a few times it's going to lead to higher distribution costs, and I just wonder if you could explain that—what and how.

Mr. Blake: The specific proposal is that the ODB will negotiate, as you heard the other member describe, with manufacturers prices for the ODB patient. So this will lead to the emergence of multiple price levels in Ontario: one price for an ODB-reimbursed patient, another price for patients in private plans and another price for patients who pay out of pocket.

We see that exact occurrence in the United States: multiple price levels, which require high levels of information technology investment in pharmacies so they can

manage those multiple pricings; high levels of investment in the distribution service, so they have to have different channels; and you have to have monitoring of the pricing across all the pricing channels. It's a very expensive thing to do.

The United States market can afford it because of the 20-times-larger market that exists south of the border. The problem is that you get the unfairness, as it's called in the United States. So patients have very different pricing to pay, and you see the emergence of the inequity there in the United States. It also leads to much higher drug costs in the distribution area, since you have to have multiple distribution channels to manage all of this.

The made-in-Canada solution that we currently have has a solidarity aspect to it, regulated by the PMPRB, which ensures that there is one price across Canada, which is currently 9% below the global median and 80% below the United States. The concern is that by initiating this new multi-price system, you'll have competitive bidding going on and you'll have this emergence of the additional costs in the supply channel and, under NAFTA, GATT and TRIPS, the emergence of a competitive market where the prices will rise to the prices in the North American continent.

The Vice-Chair: Thank you very much for your presentation.

WEST HILL PHARMACY AND COMPOUNDING CENTRE

The Vice-Chair: Now we call on West Hill Pharmacy and Compounding Centre. Do you mind stating your name, sir, before you start?

Mr. Neil Bornstein: Good morning, ladies and gentlemen. My name is Neil Bornstein. I am the pharmacist-owner of West Hill Pharmacy in Scarborough.

Today I've brought with me my two pharmacy students. On my right is Shafin Dharsi. Shafin has completed his second year of pharmacy and his sixth year of university education. On my left is Laurie Cook. Laurie has just completed her first year of pharmacy and also her sixth year of university education. These two students still have two or three years of university education remaining before they will become licensed pharmacists. They are already highly skilled, and by the time they graduate, they will be prepared to deal with complex health issues and drug therapies. They would like to know why our society creates highly educated drug experts with vast skill sets if our legislators are about to create an environment where their skills cannot be utilized.

For myself, I have been practising community pharmacy for the past 25 years and have dedicated my career to providing excellent health care. For the past 16 years, I have been the owner of West Hill Pharmacy. Our dedication to excellence is reflected in the national and provincial awards that we have received both on an individual basis and on a store basis. I have these awards with me today.

Our pharmacy has always strived for excellence in the provision of health, and I believe that the secret to that is to have and retain a motivated, highly trained and customer-focused staff. I am not alone. Many of my pharmacist colleagues are true leaders in the health care industry.

Community pharmacy in general operates at the most efficient level. We are the most accessible health care practitioners. You don't need to make an appointment to see a community pharmacist and rarely have to wait more than a few minutes.

The Ministry of Health has never provided any equipment, any facilities or any support for the services that I provide. Yes, they pay when I fill an ODB prescription. They pay me 43 cents to fill a prescription for a senior whose income is above a relatively low threshold. The ministry pays me \$4.54 to fill a prescription for the lowest-income seniors, for welfare recipients, for the disabled and for Trillium patients. It is my clients who pay the balance of the \$6.54 fee. Excellence in pharmacy service is not possible at these trivial rates, and it is these patients who have complex health conditions and drug regimens who need a pharmacist's services most of all.

My pharmacy depends upon allowances from generic manufacturers in order to provide excellent service. I need to pay a fair wage and a fair benefits package to recruit and retain quality employees. I need to continually invest in training programs, to invest and reinvest in equipment, in computers and in software. I have to pay my occupancy costs and staff my pharmacy with a sufficient number of employees so that we can provide superior services.

Bill 102 calls for these allowances to be drastically reduced and to also reduce the markup from 10% to 8%. This will be an immediate hit to my bottom line and will thwart any opportunity to achieve excellence. As a taxpayer, I understand that the ministry wants the best price. I would suggest that paying 43 cents to fill a prescription is already far and away the best price. Raising the fee by 46 cents to \$7 will hardly do anything to offset the other changes and it does absolutely nothing to offset the loss of revenue in the non-ODB market.

I would like you to understand the consequences in my pharmacy if you allow the bill to continue without fixing these problematic issues.

I will be forced to cut one pharmacist, one dispensary technician, both of the two pharmacy students beside me today, and two part-time student jobs. Additionally, we will have to cut our hours of operation, further limiting the health care that we provide. Wait times for pharmacy services will become a real issue, just as they already are for physician services, diagnostic services and hospital services.

As a pharmacist, I will no longer be available to assume the role of a triage team member. I will not be available to provide health care advice and guidance directly to patients. I'll be too busy. As a result, we will see increased visits to family doctors, walk-in clinics and

local community hospitals. This will incur even greater costs to our government and exacerbate wait times.

We will not be able to provide support to the infection control committee or the pharmacy and therapeutics committee at the long-term-care facility that we service.

We will not be able to continue to provide our hands-on blood pressure monitoring service, and we will be directing these clients to a walk-in clinic. This again will add to the ministry's cost of providing physician services and further burden our already overtaxed physicians.

We will be discontinuing our diabetic training services and directing patients to the local hospital, where their program is already underfunded.

We are currently able to provide private consultations by appointment, usually within two days. These consultations assist patients in improving outcomes in smoking cessation, asthma, heart health and opioid addiction, to name just a few. Consultations will now be provided by the pharmacist on duty between checking prescriptions and counselling walk-in patients. Yes, the ministry has talked about providing \$50 million for consultative services, but Minister Smitherman has talked about that money helping to replace the manufacturers' allowances. I simply cannot physically provide consultative services within that \$50-million pool of money when I have to check prescriptions and counsel walk-in patients. I cannot afford to pay a second pharmacist to be on duty. It is essential that the \$50-million pool of money be over and above the costs related to dispensing in order to pay for consultative services for those most at-risk patients who are currently not able to pay me directly.

We currently maintain an extensive library, a lending library of health books, pamphlets and videos for our clients and an extensive resource library of books, digital media and Internet for our pharmacists. We use these resources to assist in patient care and support our physician colleagues. We use it to support our nurses at our long-term-care facility and to support allied health professionals. We simply will not be able to continue to maintain this library.

Many of our clients are physically unable to regularly attend at our pharmacy. I will not be able to continue to provide home visits or extended phone support. Again, those clients who need my services most will have to be managed within the day by the only pharmacist on duty.

Our current extensive support of community events and initiatives will not have funding or time resources.

0930

I am a very proud Ontarian. We have a wonderful health care system. Yes, it's a system that has its challenges, but I urge you to amend Bill 102 so that the excellence in pharmacy services can continue and even be encouraged. You must eliminate the limitation on the manufacturers' allowances and reverse the reduction in the markup from 10% to 8%. Finally, you must foster true growth in health care by ensuring that the \$50-million pool of money is additional money.

Ontarians are looking to you to improve health care. Pharmacists can deliver it, but we need your help. We

would like to know why our society creates highly educated drug experts with vast skill sets if our legislators are about to create an environment where their skills cannot be utilized. Thank you.

The Vice-Chair: Thank you very much for your presentation. We have one minute left. We can give it to you, Ms. Martel.

Ms. Martel: Thank you very much for being here. Can you give us a sense, on the generic allowances, of what kind of services you're providing for your patients? I know you mentioned the lending library as a resource. Are you doing clinics?

Mr. Bornstein: I'm doing private consultations with my patients. I'm doing clinics where they're coming in and being educated about their health conditions. I'm doing extensive patient reviews in terms of what drug therapy they're doing. I'm visiting my nursing home and providing extensive time with them in support of the nurses and educating the nurses about drug therapy. In addition, I'm participating in a pharmacy and therapeutics committee and an infection control committee at the home. There are numerous things, and it isn't just professional services. It pays the very staff salaries of people who work in my pharmacy.

The Vice-Chair: Thank you, Mr. Bornstein, for your presentation.

MEDICAL PHARMACIES GROUP

The Vice-Chair: We have the Medical Pharmacies Group with us here today. Do you know the rules and procedures?

Ms. Carole McKie: Yes, thank you.

The Vice-Chair: Go ahead.

Ms. McKie: Good morning. My name is Carole McKie and I am vice-president of pharmacy services for the Medical Pharmacies Group. On my right is Richard Sevazlian, who is CEO, and on my left is Syd Shrott, who is senior vice-president of pharmacy operations. All three of us are pharmacists.

Medical Pharmacies' network of 38 pharmacies stretches across Ontario, from Windsor to Ottawa and north to Sudbury. Together, 580 people work in our pharmacies. It's a pure pharmacy operation, without any front shops. Our business is dispensing medicine, and that alone. We generate 98% of our revenue from prescriptions, much more than any other pharmacy, including local independents. You can find our pharmacies in professional medical buildings and urgent care centres, and half provide pharmacy services to long-term-care residents. Although we operate only in Ontario, we are the largest provider of pharmacy services to long-term-care residents in Canada, and that's an area on which I'd like to focus now.

We provide prescriptions and clinical services to about 35,000 seniors in more than 325 long-term-care homes across the province. This includes about 40% of all seniors living in nursing homes and homes for the aged in Ontario. If your parent or grandparent happens to live in

a home in Peterborough, Mississauga, Sudbury, Kitchener, Burlington, Durham, London, Halton, Toronto, Niagara and many other locations, chances are we fill his or her prescriptions and we make sure that the prescriptions are used right.

Long-term-care pharmacy is vital to the health care of Ontarians. Right now, we're watching the boomer generation move into its retirement years, a trend that will culminate in 25 years when one in five Ontarians will be 65 or older. Our retirement and long-term-care home programs will be expanded and comprehensive services like those that Medical Pharmacies provide will be in greater demand. It's important then that we get the balance right to enable us to deliver the sort of pharmaceutical care that Ontario's seniors and soon-to-be seniors need. That's why I want to thank Minister Smitherman, ministry staff and members of this committee and also those of the Drug System Secretariat who met with us. You understand that our drug system has to evolve if it's to survive and meet current and future needs. You took action to move this very complex system towards a sustainable basis, and for that you should be commended.

But we do have concerns with the legislation that's been tabled, and I want to raise these concerns and offer to work with the government and our professional association—the Ontario Pharmacists' Association—to craft workable alternatives that will meet the government's objectives and still sustain long-term-care pharmacy in Ontario.

Providing health care to seniors is more complex, time-consuming and, in the end, expensive than for younger people. There are many reasons for this, but the most important factors are that seniors, and especially those already living in nursing homes, often have several very severe chronic conditions that must be managed carefully. Also, they're more frail.

Drug therapies become more complex, and getting the delicate balance right requires skill and specialized knowledge. That is why we use clinical consultant pharmacists embedded right in the long-term-care homes to work with the staff and the patients. This is a professional service we see as a standard of care for our seniors, and one that is not paid for by the government, even with the professional fees suggested by the minister. It's also why we invest heavily in electronic patient records, to make sure the right patient gets the right drug at the right time.

E-health is widely considered to be the linchpin of our health care system. It's a tool that will revolutionize patient care by delivering continuity and enabling all health care providers to work closely together as a team. We are very proud that we are an early contributor to the development and the implementation of this technology, but I really must stress that we do not receive any funding for this.

Why are consultant pharmacists and e-health important? While drugs can save and extend lives, they can also shorten them, and in rare cases they can kill. Medications have to be administered carefully and professionally, and especially when the patient is a frail senior.

I've attached a copy of some unsolicited testimonials at the back from some of our long-term-care clients and I've also included a listing of pharmacy services to long-term-care facilities.

We at Medical Pharmacies rely on our partners in health care—who are our suppliers—to help us defray some of the costs associated with maintaining pharmacy operations and continuing to meet the needs of the long-term-care residents. We are very concerned about the government's plan to remove allowances or rebates from the system, as it will curtail the source of funding for the services that are keeping Ontario's seniors safe and healthy. In the absence of any comparable and sustainable funding source, companies like ours will no longer be able to meet the needs of Ontarians living in nursing homes and homes for the aged. We are also concerned that the government, in its briefing on Bill 102, hinted at a new payment model for long-term-care pharmacies but provided no detail in the legislation.

Members of the committee, I submit to you that no senior living in a long-term-care home should receive a lesser amount of pharmaceutical care than a senior living at home in the community.

For committee members, ministry staff and even Minister Smitherman, I recognize that today marks the end of what must have been for you a very gruelling process. No doubt you are asking, "Why does everyone just present their problems with the bill, and why won't anyone come forward with workable solutions?" So I'm very happy to bring you two workable solutions.

First, let's agree that seniors, regardless of where they live, deserve at least the same amount of pharmaceutical care. Therefore let's amend the legislation so that the reimbursement levels for long-term-care pharmacy are at least the same as for community pharmacy. We've brought a draft amendment with us today, and I've included it on page 6 of your handouts.

Second, let's acknowledge that the value-added services or rebates that our suppliers provide help us to deliver the much-needed medication management services to Ontario's seniors. Therefore let's work not on eliminating these rebates in one fell swoop, but instead on addressing the need for clarity and accountability in their use.

Let me be clear: The allowances are not the problem—they are, in fact, funding services that the government is unwilling or unable to fund—rather, the problem is the lack of visibility that causes concern.

0940

Members of the committee, in my years of personally delivering pharmaceutical care to our seniors, I've seen how drugs can make a real difference in people's lives. They keep people healthy and independent longer; they reduce, prevent and help manage disease. As health care planners, we know drugs can save money by reducing the need for hospitalization and other health care services.

As the minister has tellingly pointed out, we need a sustainable drug system if we are to continue to benefit from medications. We need a system that is sustainable

for every participant, including long-term-care pharmacy providers.

That's why I urge you to consider the amendments I've mentioned today and to join with us and the Ontario Pharmacists' Association in building a more workable solution.

We need your support and urge you to endorse the Ontario Pharmacists' Association's amendment to Bill 102 in subsection 11(2), under "Alternative payments," where we're asking for the addition of the clause: Payment ... shall not be less than the amount paid for a community senior."

We're eager to work with you, and we hope you will take up our offer. Thank you for your attention. Any questions?

The Vice-Chair: Thank you very much for your presentation. We have no time left.

Ms. McKie: We have no time left?

The Vice-Chair: Sorry.

Ms. McKie: I'm very sorry.

Mr. Richard Sevazlian: We will be available if anybody wants to talk to us.

The Vice-Chair: Okay.

Do we have Axis Lawrence Pharmacy? I guess not here.

We can move to the second one on the list. Is Joseph D'Cruz here?

PORT ROWAN PHARMASAVE

The Vice-Chair: Port Rowan Pharmasave.

Mr. Glenn Coon: Good morning. My name is Glenn Coon. My wife, Pam, and I own Port Rowan Pharmasave in the town of Port Rowan, Ontario, which is in Norfolk county in the southwest part of the province.

Our town is a small town, made up of primarily retirees. Most live in an active adult development commonly referred to as The Villages, as well as the community of Long Point, which is 15 minutes to the south of Port Rowan. The nearest towns and pharmacies are 30 minutes away to the north and northeast. They are Tillsonburg and Simcoe.

Our town, like many towns in rural Ontario, is deemed underserved. We have one doctor and require at least one and a half more doctor positions to meet our needs. Our one doctor gave our town notice two years ago that he would be retiring four years hence. We have been searching to find a replacement for Dr. Long with absolutely no success.

Let me continue to paint a verbal picture of our town. A few years ago, a devastating ice storm hit the north shore of Lake Erie. In a matter of hours, all of normal life in Port Rowan and the surrounding community came to a halt. Over the next several days, emergency resources necessary to cope with the crisis were very slow to make their way to Port Rowan. Communications with local and provincial governments were almost non-existent. It was obvious that emergency preparedness in the west end of Norfolk county was not high on any authority's list.

So, last fall, with the emerging threat of avian flu and, as we have seen in recent weeks, the potential outbreak of a pandemic flu virus, Dr. Long, myself and another community member spearheaded a grassroots, community-based group to plan for a disaster, be it bird flu, ice storm, chemical spill in Long Point Bay, the destruction of hydro transformers or possible terror attacks. We have listened to our government say, "Get prepared."

We now have a structured committee made up and chaired by local citizens, and we meet monthly. We work closely with the Haldimand-Norfolk Health Unit, which is absolutely thrilled with our community's proactive stance on emergency preparedness. We will have in place community volunteer members trained to step in when the government resources fail. The water treatment plant, the lagoon sewage system, a flu-free emergency triage unit, a beefed-up mission food bank, a community on patrol security surveillance, alternate communication systems—internal and public—are just a few things our community will have in place for us in the first few crucial months of a disaster.

There is such a sense of community living in Port Rowan, it is infective. People choose to live in rural Ontario for good reason, and there are pharmacists willing to provide them with health care.

You have heard it for weeks now. Bill 102 will take non-taxpayer money, the so-called generic rebate, and replace it with taxpayer money at a much-reduced amount to the pharmacist. No expert would have come up with that. Bill 102's expert had me actually losing money in providing high-cost medication to my cancer and HIV-infected patients until the Minister of Health removed the \$25 cap. How did that get into the act in the first place?

This bill is flawed, and I am absolutely frightened by the expert's regulations to the act, because there is nothing transparent about this bill except how it is going to hurt rural Ontario health care. The National Post's article on June 1 entitled, "A Bill to Kill," outlines how murky this legislation is and how I will not know the full financial impact until well after the bill is passed. So I can only be general when I give you dollar numbers; you can't expect otherwise.

If this bill passes without the amendments proposed by the various pharmacy associations, at fiscal year-end 2007, I will not be paying any corporate income tax. Given the new bill's income sources, less the old outlawed income sources, I expect to lose between \$120,000 and \$150,000 in revenue. I fully expect to operate at a loss in fiscal 2007. That kind of loss may be able to be withstood in busy urban pharmacies or in pharmacies with big front shops.

I have partnered with many suppliers to create an environment where my patients can come to get confidential, professional advice and service for their health care needs.

I provide more than a dozen community seminars annually. I have partnered with the Ontario Provincial Police and the Grand Erie District School Board for more than 15 years in the values, influences and peers—VIP—

program given to grade 6 students in various Norfolk schools, outlining the importance and dangers of prescription, non-prescription and illicit drugs. Lions, Lionesses, women's institutes, men's groups, church groups and our own five-times-a-year Pharmasave community wellness seminars and clinics, held at the Community Church Fellowship Hall, are all part of giving back to the Port Rowan community. A well-educated community is a healthy community.

Although Port Rowan Pharmasave does not have the customer base to be open late hours or open on Sundays, except in the summer tourist time, my patients know that I am available 24 hours a day, seven days a week to fill their emergency prescriptions. As well, they know they can call on me at home to answer their health questions, and they usually do. If I can intervene on their behalf with Dr. Long, I have 24-hour access to him. He is sure to let me know how to reach him if he is away from his office.

Port Rowan's town festival, which celebrates our community every year on the Labour Day weekend is called Bayfest. Port Rowan Pharmasave is sponsoring the opening ceremonies and bringing Canada's own international touring artist, Fred Eaglesmith, to the event this year.

Our partnering goes beyond Port Rowan. Pharmasave has sponsored for many years a young couple doing mission work for YWAM, Youth with a Mission, overseas. We are now partnering with a local group of about 16 people who will be travelling to the AIDS-ravaged nation of Mozambique in March 2007 to build an orphanage in 14 days. We will be providing medicinal and first aid supplies to go with the group, as well as providing cash to buy building supplies.

Partnering is usually, but isn't always, received. I made an offer to our local government to partner with Norfolk pharmacies in a program to help ensure that the community's unused and outdated medicines were disposed of properly and would not enter landfill or the water supply. That offer was hardly considered. They must have an expert, too.

By killing the key component financially—generic partnership revenue—and replacing it with 46 cents and the mystery cognitive services fee, our aging population in rural Ontario is in for a greater reduction in services.

Specifically in Port Rowan, it is going to be very hard to cut. I love my town, my patients and my staff too much to give them less. If you do not understand that statement, you don't know the compassion and feeling of community associated with Port Rowan living.

I hope it is not too late for you to fix the bill with rural Ontario in mind. Because if this legislation passes as is, although I am a thriving, established, going concern business, I cannot continue to operate in a deficit position for long, depending on how great my loss is and how understating my bank account manager is.

I will continue to be in business caring for my patients in Port Rowan, but I can't and I won't if I don't have the revenue. I will continue to be involved in the advancement of health education in Port Rowan, but I can't and I

won't if I don't have the revenue. I will continue to protect Port Rowan from the threats that Ontario's future holds, but I can't and I won't if I don't have the revenue.

I will have to be leaner and meaner in every possible way for my business, and as for my fairly compensated pharmacy staff positions, a reduction is pending. One full-time pharmacy technician and a quarter pharmacist position will be cut, starting October 1. I am wondering if I am going to even have the time to take advantage of the cognitive services revenue, whatever that is. I will not stop helping the less fortunate in Port Rowan and those abroad, but I will have to stop if I don't have the revenue. I will not stop promoting Port Rowan and its salt-of-the-earth people, but I will have to stop if I don't have the revenue. I will not stop being available to them 24/7, but I will have to stop if I don't have the revenue.

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Bill 102 does not address how important a vibrant retail community pharmacy is to the health and welfare of small-town Ontario. Rural Ontario, without front-line, real-world pharmacists, is a step in the wrong direction for our health care system. The government will lose an integral part of their health care structure if patients have to drive a long distance to urban areas for basic prescription health care needs.

I will do everything this humble little heart can do for rural Ontario's access to good health care until I have to provide my professional care, which is building a healthy community, in a province that does not take financial advantage of their pharmacists. It's a shame that too many of Ontario's health care providers have already figured that out.

Sincerely, Glenn Coon, citizen of Port Rowan, Ontario.

The Vice-Chair: Thank you very much for your presentation.

Now I want to call on Axis Lawrence Pharmacy. Not here.

JOSEPH D'CRUZ

The Vice-Chair: Joseph D'Cruz. Welcome, sir. You know the procedure.

Mr. Joseph D'Cruz: Yes. I'm going to limit my remarks to about five minutes to allow time for questions.

I'm going to speak to the provisions in Bill 102 regarding reimbursement for generic drugs. If you look at the IMS database on drugs, which is the standard database we use to analyze the pharmacy system, you'll see that the average billed invoice price for a prescription using generic drugs is \$23.33. That's the average for all drugs in Ontario last year. The government reimburses \$32.20 for that, and that consists of the dispensing fee of \$6.54 and a 10% markup, which is \$2.33. Underneath that, there are the so-called rebates that generic manufacturers offer to pharmacies. Those rebates run anywhere from 40% to 60% of the billed price. Let's use the low number, 40%. That means that the pharmacy gets \$9.33 from the generic drug manufacturers. When you add all of that up, it means that the net cost to the pharmacist is

\$14 for that prescription, whereas the government is reimbursing for that prescription \$32.20. In other words, what they're doing at the moment is making a markup of 130%, which by any reasonable standard is excessive.

Under the provision of Bill 102, that average billed price is going to go down because you're going to lower the price for generics to 50% of the branded drug. It will go down to \$18.52, for which the government will reimburse \$27—in other words, the net amount that the pharmacy will pay for that drug, assuming that the rebates go down from 40% to 20%, which is a reasonable level by commercial standards. Assuming that, the pharmacy will pay \$14.81 for the drug and make a markup of 82%, which is still a very reasonable markup by any standards. So, because of the provisions of Bill 102, what is going to happen, number one, is that the government is going to pay significantly less for those drugs. The generic drug manufacturers will have their prices lowered, but at the same time will lower the amount of rebate that they spend, and consequently the pharmacy sector, the chain drug stores and the individual pharmacists, will make a smaller profit but still a very reasonable profit.

So I think this set of provisions of the bill is very reasonable and that in fact all parties will do well out of that.

I'm now open to questions for the rest of the time.

The Vice-Chair: Thank you, Mr. D'Cruz, for your presentation. I have a question for you. Are you a concerned citizen, a pharmacist?

Mr. D'Cruz: I'm a strategy professor in the business school at the University of Toronto, and I'm also the chair of pharmacy management at the Leslie Dan school of pharmacy at the university.

The Vice-Chair: Thank you very much. We have six minutes, a lot of time, two minutes for each party. We'll start with Mr. Peterson.

Mr. Peterson: Thank you very much for your positive approach. There was much concern by the people who came in from the Medical Pharmacies Group that we are eliminating rebates and that they're going to be—obviously, one of the problems in doing this is that the rebates under the previous regime were not defined and there was no code of conduct surrounding them. Secondly, they were pretty extreme. Some rebates were indicated to be somewhere between 40% and maybe sometimes as high as 70%, and that made the government think they weren't getting good value here.

In terms of balancing this, the government wants to keep the pharmacists front and centre as caregivers. They want to do that by not allowing price increases over and above the formulary price. Previously, the large pharmaceuticals would set a price and then they'd increase the price and the pharmacists would have to eat it. So when they talk about the 10% and 8% rebate, it was kind of academic because they're only getting maybe two or three points of the 10 points. We're trying to cut it back to eight and give them a full 8%. We're also looking at introducing cognitive service fees so that the service they give to the people in the community, like this last gentleman spoke so eloquently about and what a great job he

does—he actually be reimbursed for those fees, for which he is not charging now.

I appreciate your coming at this from a business point of view. Where do you see the biggest pressure on the government?

Mr. D'Cruz: Clearly the biggest pressure will come from the retail pharmacies, because they will be getting less out of the system. The question you have to address as legislators is whether this is reasonable or not. In my opinion as a professor of management, I think what is being proposed in the legislation is very reasonable.

Mr. Peterson: But if we address their concerns and move toward leaving some rebates in to keep them whole through a definition of “professional services” or of “educational services”—different words have been bandied about—then hopefully we could keep the distribution system, the front-line workers, the druggists, whole, and look at savings because of the volume the government is buying, not on the backs of the hard-working front-line workers.

Mr. D'Cruz: Though what is critically important is that code of conduct, because you have to limit the amount of rebates the manufacturers will be allowed to give. If you set a limit and then you enforce it, the whole system is workable.

Mr. Peterson: As a strategic business thinker, have you seen any other distribution systems where rebates equal 40% to 70% of the price of a product?

Mr. D'Cruz: No, this is extremely unreasonable. If you look at other retail—for example, the grocery sector—rebates run 30% to 35%. If you look at other countries—I was just looking at Germany, for example; the rebate is capped at 20%.

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Mrs. Witmer: Thank you very much for your presentation, although your presentation seems to be at odds with what we've been hearing from community pharmacists who have been telling us in a very passionate way—Mr. Coon just told us the impact on his pharmacy, and we've been hearing that on an ongoing basis in the limited time this government is allowing for discussion on this bill. We've heard that pharmacies are going to lose as much as \$150,000 per store, that we're going to see maybe 300 pharmacies totally eliminated in the province. We know that many of these pharmacies are in small communities such as Port Rowan, that there will simply be no one there to provide that front-line support. So how can your numbers show that this bill—and furthermore, the reality is this bill doesn't speak to what you've said. Most of it is mystery and is going to be in regulations. Are you not concerned about the pharmacists in this province, the pharmacies that are going to be eliminated?

Mr. D'Cruz: It's really hard to be concerned about a sector that is going to make an 82% markup on generic drugs and will make a markup on the branded drugs as well. The retail pharmacy business is a portfolio of three different kinds of businesses: the generics, the branded, and the front store—the cosmetics etc. that they sell.

Mrs. Witmer: Yes, but not all of them sell front-store.

Mr. D'Cruz: Almost every retail pharmacy has some non-pharmaceutical business. Call it front store, call it whatever you do, they all have some business of that nature. It may be toothpicks. But it's very hard to feel sorry for a sector that is making an 82% markup.

Mrs. Witmer: I've seen the financial data, and obviously there's a huge disconnect between what you're saying and the data I've been given.

The Vice-Chair: Ms. Martel.

Ms. Martel: There are a lot of people behind here shaking their heads when you say there's going to be an 82% markup. Would you mind slowly, for me, going through how you arrive at that conclusion?

Mr. D'Cruz: Certainly. The average invoice price is going to be \$18.52 under the new regulations. Of that, the government will pay \$27. So for something that the pharmacy buys for \$18.52, the government is going to reimburse \$27, of which \$7 is the dispensing fee and \$1.48 is the new proposed markup under this bill. In addition to that, the pharmacy will get from the manufacturers a 20% rebate, which is \$3.70. That means that net, the pharmacy is paying \$14.81 and is being reimbursed \$27. So the difference between that is the 82% I'm talking about.

Ms. Martel: The first thing I would note about that is the \$1.48 new markup, because as we've heard from other pharmacists, there really is confusion in the bill about what the markup is based on. You've put a very specific figure. Is this based on the wholesale price or not?

Mr. D'Cruz: It's based on the invoice price. That's the price on which the generic manufacturer invoices the drugstore.

Ms. Martel: But we have heard that the generic manufacturers also take a percentage, have a markup as well, so what I need to know is, is this being applied, in your mind, after the generics have taken their cut or not?

Mr. D'Cruz: This is strictly the economics of the store, not the economics of the generic manufacturer. This is what the store is billed, what the store receives from the government and what the store receives from the generic companies. That's it.

Ms. Martel: So one of the factors that might be missing, then, is what the generic manufacturer is taking from the pharmacy over and above the invoice, because they're making some money on this transaction.

Mr. D'Cruz: They're not taking; they're giving. The generic manufacturers are giving a rebate.

Ms. Martel: Sorry, the wholesaler.

Mr. D'Cruz: The wholesaler. Yes, if you include—I didn't include the wholesale markups etc., just to clarify the picture, but this is net of everybody's markups.

Ms. Martel: But wouldn't you have to apply what the wholesaler is doing?

The Vice-Chair: Ms. Martel, your time is over. Thank you very much, Mr. D'Cruz.

We're now going to call Axis Lawrence Pharmacy again. They're not here.

POLICE PENSIONERS ASSOCIATION OF ONTARIO

The Vice-Chair: The Police Pensioners Association of Ontario is here. I imagine you know the procedure. You have 10 minutes. You can speak for the whole 10 minutes, or you can divide it by speaking and answering questions. Go ahead, sir.

Mr. Paul Bailey: With me today in the audience is the president of the Metropolitan Toronto Police Pensioners Association, Bruce Priestman, and his colleague Bernie Kapalka.

Committee members, my name is Paul Bailey and I'm president of the Police Pensioners Association of Ontario. We represent over 5,000 police retirees from every area of the province: Ottawa; Sudbury; all through the GTA, including Toronto, Halton, York and Peel. We also have associate members out in Windsor, Sarnia, and places like that.

I want to thank the committee for allowing the association the opportunity to provide comments on this extremely important piece of legislation. Given the time allotment, I will get right to the point.

First, I believe it's important to know and acknowledge that this legislation will impact the most vulnerable members of our society: senior citizens and the disabled. It will also impact drug manufacturers, pharmacists and other stakeholders, and potentially all Ontario citizens. A significant number of our 5,000 members are seniors over the age of 65, and many are disabled.

Second, the baby boomers are presenting in the health care system, and a significant number of these will move onto the Ontario drug benefit program. The wave of seniors will put tremendous pressures and strains on all aspects of health care, including some equally important issues such as the chronic shortage of doctors. And recently a statement was made that by 2011 we'll have a shortage of nurses in the area of 100,000.

After careful review of the legislation, and having spoken to various stakeholders in this consultation process, a number of things need to be said in support of this legislation.

The Police Pensioners Association of Ontario was very pleased to hear the minister say in his House statement of April 13, "With respect to coverage for Ontario drug program recipients, there will be no changes—not to copayments, not to deductibles, not to eligibility." Committee members, this statement by the minister is very reassuring to many of my senior members, people in their 70s, 80s and 90s who in most cases have only one source of income, their pensions. As you know, any increase in costs would have serious financial impacts on these individuals.

We are supportive of legislation that will allow drugs to be approved for use in a more timely fashion. This is particularly important for patients with chronic illnesses.

We also agree that we need better drug pricing and a more efficient and accountable drug system that utilizes tax dollars in an optimum fashion.

I add that some parts of this legislation are troubling to our members and require further dialogue.

First, the bill creates an executive officer to take charge of Ontario's drug programs and outlines this person's functions and powers. Under the bill, the Lieutenant Governor will appoint the executive officer, who will then assume responsibilities that had rested with the minister.

This officer will have wide-ranging powers, which include setting and removing "interchangeable" designations and maintaining the formulary published by the ministry. The executive officer will also be able to add and remove drug products listed on this formulary without a regulation, as is needed now, and to establish clinical criteria required for payment regarding certain drug products or classes. This officer will also have the power to fine manufacturers and pay pharmacies for services provided, along with the authority to undertake audits. The bill will also establish some rules on how the executive officer must make an order or notify the manufacturer.

It is also our understanding at this point in time that the Statutory Powers Procedure Act will not apply to the executive officer's orders, meaning that the executive officer need not follow statutory rules of due process which other Ontario proceedings must apply. So should a drug manufacturer disagree with the executive officer's decision, they will not be afforded the right to appeal, but only to apply for judicial review, which is available only on limited grounds. It's worrisome to us that the executive officer can manage outside established protocols.

This creates, in our view, two important concerns. The first is that this person has far too much authority for such an important piece of legislation. Secondly, we feel the responsibility to manage and make decisions affecting so many vulnerable people should rest with an elected official, the Minister of Health and Long-Term Care. We don't understand why the minister would want to divest himself of such significant power to a non-elected individual. Perhaps valid reasons exist for the creation of this officer, but a more detailed explanation would be helpful for a better and more focused understanding of why this part of the legislation was introduced. There is also a worry that the costs associated with setting up another level of bureaucracy would strain the already strained budget.

We would also feel more secure if some of the statements the minister made, especially the "not to copayments, not to deductibles, not to eligibility," were enshrined or embedded in the legislation and not governed so much by regulation.

1010

We are in the process of determining new and important drug policies that will last into the next decade or perhaps even longer. The decisions and changes to this policy will have a profound impact on seniors and the disabled, drug manufacturers, distribution firms and pharmacists, not to mention all residents of Ontario. The question needs to be asked, "What's the rush?" If the majority of us see this legislation as important and nec-

essary, why not take a step back and have more meaningful consultation and discussions with all stakeholders? A 10-minute presentation in Toronto doesn't provide effective dialogue with all stakeholders. Our members live all over the province, and coming to Toronto poses some hardships on people who want their voices heard.

We hear concerns in the media that this bill will impose unprecedented restrictions on the sale of brand name products in Ontario and impact the ability to invest in biotech research. We hear the pharmacists are extremely concerned about the financial impact that Bill 102 will have on their businesses—store closings, layoffs and so on. Members of the committee, we believe history has shown time and time again that whenever a supplier of services is financially negatively impacted, they could resort to other measures to ensure survivability. Currently, pharmacists in Ontario provide a number of services to the public and seniors without charge, services like disposing of syringes and medications. There is nothing to prevent the pharmacists from introducing user fees or consulting fees in order to recoup lost revenue. Should that happen, medications would be flushed down toilets or thrown into the garbage along with syringes and other hazardous waste. We don't want good legislation like this having a negative impact on other areas of government, like the environment.

I believe we all agree that over-the-counter drugs play a significant role in the health of seniors and the disabled. What prevents these manufacturers or pharmacists from increasing the price of OTC drugs to recoup lost revenue, which in turn would negatively impact those most vulnerable in our society: seniors with health problems?

In closing, let's all take a step back. As I have said, much of this legislation is needed in order to sustain the Ontario drug benefit program. However, to change a drug policy in a matter of months with limited consultation and agreement will result in acrimony and distrust, and probably a range of unforeseen issues that will have a detrimental effect on most citizens of Ontario.

I want to thank the committee for their time today.

The Vice-Chair: Thank you very much for your presentation. We have one minute left. We'll give it to Mr. Peterson.

Mr. Peterson: Thank you for your presentation, and thank you for your concern. This process has actually been undertaken for over a year, and they've had over 300 meetings and met with over 150 different stakeholders. I'm not sure if I've got those numbers exactly right, but it has not been a rush to judgment here. So if you don't feel you've been included in the process, I'm always happy, as the parliamentary assistant, to hear more from you, but we think we've done a pretty extensive consultation.

The reason for appointing the executive officer is a way to get away from cabinet secrecy, because right now cabinet has to make all the changes to the formulary, and that means it's bound up in secrecy when it should be an open, transparent process. With the executive officer, it should be a transparent process. I guess what you're

saying is that it should be subject to appeal; there should be some mechanism for checking on his judgments. I think that's something that we've heard from other people and we'd be looking at seriously in terms of having some mechanism.

Some people are also concerned that the accountability of the minister and the ministry in this process would be obviated, but our intention is that if this executive officer reports to the deputy minister and the deputy minister reports to the minister, there will be full political accountability here and the process of approving new drugs and the process of rapid breakthrough drugs and the process of getting drugs on the formulary would all be an open, transparent process.

If you have any further comments on this, I'd appreciate hearing them. Thank you very much for coming in. We look forward to maintaining a dialogue with you.

The Vice-Chair: Thank you, Mr. Peterson, and thank you, Mr. Bailey.

BRAMPTON HEALTH COALITION

The Vice-Chair: The Brampton Health Coalition. You can start when you're ready.

Ms. Dora Jeffries: My name is Dora Jeffries, and I'm here today representing the Brampton Health Coalition. Our group is linked to the Ontario and Canadian Health Coalitions, and is part of a network of over 70 local health coalitions across Ontario.

The Brampton Health Coalition was hesitant at first about speaking at this hearing, because we are not as familiar with Ontario's drug system as we are with hospital issues. However, we elected to speak today for two reasons. First, our group has often been critical in the past of government initiatives and decisions, but in this case we can support the goals and many parts of Bill 102. This hearing provides our group with a good opportunity to show that our aim is to advocate for public medicare and to support initiatives that will strengthen it. Secondly, we believe that the standing committee on social policy truly wants to hear from ordinary people, not just experts.

We do not have any vested interest in this legislation and feel we can respond to it simply as ordinary citizens of Ontario who are committed to a sustainable, publicly funded and delivered health care system.

The first of the two main goals of the Brampton Health Coalition is to advocate for transparency and public involvement, and to oppose secrecy in decision-making in all our government initiatives. The divisive and negative effects of the public-private partnership—P3—Brampton hospital deal have been keenly felt in our community. The Brampton Health Coalition, along with the Ontario Health Coalition, CUPE, SEIU and OPSEU, has been in court for over three years trying to get full disclosure of the financial arrangements and the extent of the privatization of services in our hospital. Therefore, we applaud the goal of Bill 102 to ensure that patients

will be involved in priority setting and drug funding decision-making.

Secondly, we want our government to contain spiralling costs in all areas of health care so that one sector does not drain a disproportionate amount of our health care dollars from the whole system. We want our government to protect the comprehensiveness of health care. By doing this, we will ensure that money is available to fund a continuum of services. Only by containing costs and spending our money wisely can we maintain the full scope of health care. We fully support the Canada Health Coalition's pharmaceutical strategy and believe that our public medicare system should be expanded to include pharmacare. A few facts about the pharmaceutical industry illustrate the pressing need for a national pharmacare program: Costs for Canadian prescription drugs rose 62.3% from 1994 to 2004; drugs now rank second after hospitals as a share of total health care spending.

The Brampton Health Coalition views this legislation as an important first step in controlling the cost of drugs in Ontario, widening the use of generics to replace the higher-cost brand name drugs, reducing the markup on drugs and ensuring that the provincial government pays pharmacies for the actual cost of drugs.

(1) Widening the generic substitution of more expensive brand name drugs: All credible studies and medical experts agree that this will cost less and not harm patients.

(2) Stopping the payoffs—called rebates—to pharmacies by generic companies. These “rebates” are given to the pharmacies by drug companies as a pay-off for stocking drugs or prominent product placement. The government pays the pharmacy the full cost of the drugs and then the pharmacy pockets the difference between the amount they charge the government and the amount they pay for the drugs. This means that the Ontario drug program is subsidizing for-profit pharmacies, especially the big chains. In fact, big chain stores receive about 75% of the rebates. The government's intent is to use its bulk-buying power to get lower costs from the drug companies for the people of Ontario and eliminate these so-called rebates. The chain drugs stores have created a coalition to oppose this. This week a spokesperson for the Coalition of Ontario Pharmacy was interviewed by Paula Todd on Studio 2. The spokesperson for this lobby group actually called these rebates “investments” in the pharmacy. I was left wondering if this coalition was a front for the large chains.

If small, independent drug stores will suffer financial hardship when the rebates are eliminated—and they may, because I go to a small, independent drug store in Brampton and I know my pharmacist is worried—then this must be dealt with separately. Big chains are likely the biggest threat to small, independent pharmacies. Generally, in countries where pharmacy licences are more tightly regulated, the number of pharmacies has been rising.

Also, we must look at the group that is so vociferously opposing this, the big pharmacies. Pharmacies in Ontario

and Canada are doing quite well. StatsCan reports their gross margin—total operating revenues minus cost of goods—to be a healthy 31.4%. Recently in the news, Shoppers Drug Mart is reporting robust profits. Earnings have been reported up by 20% to 21%, sales up by 9%, profits up. “Shoppers Profit up 20%”—Globe and Mail, May 5, 2005.

(3) Controls on pricing and markups for drugs—dropping the price of generics by 20% to 50% of brand name drugs. Currently, the first generic on the market costs 70% of the brand name; the other generics cost 90% of the 70%. These guidelines were meant to be price ceilings, but now they've become floors. We believe this will reduce costs without harming patients. One other option for drug pricing is to be found in Canada, in British Columbia, where they use reference-based pricing. In BC, only the cheapest of a class of drugs is covered by the government plan. Patients wishing a more expensive product must pay the difference. If there is a genuine medical need for the more expensive product, the government will pay for it in full. Studies in BC have never demonstrated any adverse health outcomes from this policy.

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Brand name drug companies argue that generic substitutions will threaten research and development jobs and will harm patients. Neither is true. There have been several peer-review studies done of British Columbia's reference-based pricing system, involving much wider generic substitution than that proposed by Ontario, which have found that patients are not harmed by the substitution. Despite the research and development claims of drug companies, the evidence is that the non-profit sector and governments spend and perform more research and development than the extremely wealthy drug companies. Moreover, the vast majority of the new drugs pushed onto the formulary by the drug companies offer few therapeutic advances and are very costly to our limited health care dollars.

This morning I read Ian Urquhart's column in the Star, and he addressed this problem of research and development. When we look at these threats from the large pharmaceutical companies, we do have to look at the statistics, some of which I've already read to you. Here are some more:

—The top US drug makers spend 2.5 times as much on marketing and administration as they do on research.

—At least one third of the drugs marketed by the industry leaders were discovered by universities or small biotech firms.

—Statistics Canada reports that universities and teaching hospitals are by far the largest performer in health research and development, at \$3.7 billion in 2005, compared to the business sector, which includes the pharmaceutical industry, at \$2 billion.

—Of the 117 drugs with new ingredients introduced in Canada between 1998 and 2002, only 15 provided substantial improvement over existing drugs. The rest are

“me too” drugs with few therapeutic advances, but are responsible for 80% of drug expenditure.

—I found this particularly shocking: Drug companies spend more than \$20,000 per year for every doctor in Canada on drug samples, sales rep. contact, conferences, trips and giveaways. The Canadian Health Coalition reports that this figure can be as high as \$37,000.

—The top 10 pharmaceutical companies make more in profits than the rest of the Fortune 500 combined.

—The 2006 Fortune 500 ranks pharmaceuticals as the fifth most profitable industry, just behind crude oil and banks.

When you're hearing cries of, “Poor me,” and “We can't continue,” and “We can't have research and development,” from the pharmaceutical industry, take it with a grain of salt.

The section of the legislation relating to rapid review of breakthrough drugs may or may not be a good thing. It could get more drugs that do not provide additional benefits on the formulary, as I've mentioned in my facts. This depends on how rigorous the controls are. The need for rigorous protection of patient safety and assurance of the efficacy of drugs needs to be balanced with patient needs and demands for access to drugs in urgent cases and in cases of rare conditions. This truly is a moral dilemma.

Any additional initiatives to control the drug industry lobby would be very positive, including increased democracy and transparency, reduced corporate donations to political parties and additional steps regarding drug company influence over physician prescription practices. Money being saved through the measures that are contained in Bill 102 should be reinvested in health care or social programs.

We also have some concerns about the creation of the executive officer. The EO will have powers cabinet used to have to determine what is on and off the formulary. The EO will also negotiate deals regarding price and bulk buying, a role formerly not done by anyone in the ministry. On principle, we believe that the decision about what is listed and not listed on Ontario's formulary must be one that is accompanied by democratic accountability, and I'm glad that you addressed that. In shifting the responsibility to determine what is listed to the executive officer, we would like to see clearly that the responsibility for the contents of the formulary remains with our elected government.

The Vice-Chair: There's no time left.

Ms. Jeffries: Okay. Thank you. I think my conclusion was contained in the body.

Thank you very much for listening. I've learned a lot, by looking at this bill, about what the government is trying to do. As our group said, we applaud the intent and we can support many of the initiatives. However, we do have concerns.

The Vice-Chair: Thank you very much for your presentation.

ARTHRITIS SOCIETY, ONTARIO DIVISION

The Vice-Chair: Now we have the Arthritis Society. Before you start, if you don't mind, just state your names.

Ms. Jo-Anne Sobie: I'm Jo-Anne Sobie, with the Arthritis Society.

Thank you, Chair, and good morning. It is certainly a pleasure to be here today. Joining me is Mary Kim, Ontario co-chair and representative of the Arthritis Society's national patient group, the Canadian Arthritis Patient Alliance. I have asked Mary to join me today because, as an arthritis consumer, she can share with you, the committee, a first-person perspective on how Bill 102 will affect arthritis patients.

Let me begin by saying that the Arthritis Society applauds the government's inclusion of two patients as full voting members on the committee for the evaluation of drugs. We applaud the creation of a citizen council on drug policy and are thankful that the section 8 mechanism will be restructured. These are timely and major improvements to a system that has been failing patients for a very long time.

The Arthritis Society recognizes Bill 102 as the foundation of the government's drug system reform package. We believe that it is critical to achieving the goal of a public drug system that provides the right drug to the right person at the right price. With this in mind, I would now like to address the Arthritis Society's concerns with Bill 102.

First, the definition of “interchangeable” as proposed in Bill 102 must be changed. In subsection 5(2), the description of “interchangeable” has been broadened by providing that interchangeable drugs can have “the same or similar active ingredients in the same or similar dosage form” The inclusion of “similar” in the definition of “interchangeable” will enable the dispensing of medications that are not bioequivalent as determined by Health Canada. Physicians will not know which generic form of the medication was dispensed and the patient-physician relationship will be inappropriately encroached upon.

Expanding the definition of “interchangeable” will negatively impact on the physician-patient relationship, diminishing the physician's capacity to ensure that their patient is receiving the right medications for their unique condition. The Arthritis Society feels that the legislation must be amended to remove the word “similar” from the definition of “interchangeable” as it pertains to active ingredients.

Our second concern with Bill 102 is found in section 3, which proposes that where “a prescription directs the dispensing of a product that is not an interchangeable product ... the dispenser ... dispense the interchangeable product” that contains a drug or drugs in the same amounts of the same or similar active ingredients or dosage form. Generic-first prescribing can be an effective cost saving tool, but the physician must be aware of the generic substitution, and the generic substitute must be bioequivalent. The dispenser's ability to substitute generic medica-

tions that are similar may result in complications that neither patient nor their physician is anticipating. Section 3 should be removed in its entirety and the current legislation maintained.

Our third concern with Bill 102 is that the legislation seeks to reduce costs through competitive agreements. We agree that Ontario needs to negotiate a better price for many of the drugs purchased through our public drug program. Competitive agreements as they are used in the United States Department of Veterans Affairs have had a limiting effect on the number of medications that patients can access. Physicians need to have options within a class of drugs to ensure that each patient is receiving optimal benefit from their medications. Limiting the available medications within a class will not meet the patient's therapeutic needs.

This type of therapeutic limitation will pass many of the system costs on to the patient. For those who can't afford the correct medication, their health outcomes will be poorer, resulting in a need for patients to access more expensive treatment elsewhere within the health care or social service system. Competitive pricing should not limit access to drugs for patients. The government must commit to ensuring that patients have access to the medications they need and not use the limitation of the number of medications available within a class of drugs as the basis of their price negotiation.

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Finally, Bill 102 proposes to create an executive officer of Ontario drug programs, a new and powerful position. The executive officer will assume administrative and decision-making responsibilities for Ontario's drug system.

To ensure that the best interest of patients is met, an expanded appeal process must be built into Bill 102. The appeal process should not impede on the ability of the executive officer to approve medications rapidly—this is vitally important—but must look at all negative listing decisions to ensure that all details were evaluated thoroughly. This review could take the form of a drug system Ombudsman or a small panel of independent medical and patient advisors.

We at the Arthritis Society strongly believe that timely access to modern medications results in a reduction in the need for more expensive uses of the health care system, including physician and hospital visits, and has the potential to reduce the long-term economic and social costs of arthritis-related disability.

I would like to thank you for your time. I hope our recommendations expressed here today and within our written submission will be helpful in ensuring that Bill 102 is right for patients.

I'd now like to ask Mary to share with the committee her arthritis patient perspective.

Ms. Mary Kim: I'd like to thank this committee for the opportunity to present as a person living with arthritis. There are 1.6 million Ontarians living with arthritis, a majority of whom take medications to control their symptoms, as there is no known cure.

I'd like to speak on the role of the pharmacist. As a patient who lives with a chronic disease like arthritis, I recognize the vital role pharmacists play in the management of their disease. The community pharmacist, especially, has truly become a front-line health care worker, a health care worker who is indispensable to the management of my disease. With her constant monitoring of my prescription and over-the-counter medications, my pharmacist has played an important role in maintaining my health.

As a result of my rheumatoid arthritis, I take several prescription medications, which can interact with over-the-counter medications that I may need from time to time. Several years ago, I took an over-the-counter cough suppressant for a severe cold. That night, I experienced a rapid heart rate and shortness of breath. I thought I was having a heart attack and I was about to go to the emergency department when it settled down. The next day, that experience came back again and I was able to contact my pharmacist. She went over my medications and said that the over-the-counter cough suppressant I was taking was interacting with my daily dose of anti-inflammatory medication and recommended a different cough suppressant. Since then, I have always consulted my pharmacist before going on any over-the-counter medication, as well as any vitamin, mineral or herbal supplement.

As you can see, the role of the pharmacist is and should be very complementary to the role of the physician and the patient-physician relationship; however, it should never usurp it. While pharmacists have extensive knowledge of medications, they have limited knowledge of individual patients. They may not have access to the results of patient diagnosis, treatment and/or monitoring tests and other factors that are considered when a physician prescribes medication.

Therefore, when medication is interchanged, it should be done only with medications that are considered bio-equivalent as defined by Health Canada. Physicians and patients need to be aware and informed about any changes to their medication and what it might mean to the health and well-being of the individual patient. Bill 102 must ensure that the public drug system respects the physician-patient relationship, defines an appropriate role for the pharmacist and does not allow the definition of interchangeability to include the word "similar."

I would also like to speak today on the rapid review process, especially on what the government considers breakthrough drugs. I would like the government to expand their current definition of "breakthrough" to include quality-of-life medications, which are most important to the people living with chronic illness like arthritis.

In 1985, at the age of 25, I was diagnosed with rheumatoid arthritis. It took me several months to be prescribed the right medication at the right combination, taken in the right way. The delay caused permanent joint damage, so that within three years of my initial diagnosis, I was using crutches. Within four years of my initial diagnosis, I was basically bedridden. Within five years, I was

having my first joint replacement surgery. Between 1990 and 2000, I had eight total joint replacement surgeries over seven joints. It was expected that I would have my ninth replacement surgery sometime later in 2000. However, that ninth joint replacement did not come until four years later.

So what happened between 2000 and 2004? In 2002, I was given a new medication called a biologic—at the time the new advancement in arthritis medication that modifies the biologic that targets the inflammation process in my joints. The biologics reduced the stiffness, the fatigue, the pain and the inflammation of the arthritis, which in turn slowed the progress of my rheumatoid arthritis. Also, the reduction of these symptoms allowed me to improve my exercise—

The Vice-Chair: Thank you for your presentation. I guess you've passed your time. Thank you very much.

Mr. Peterson: I would like unanimous consent that we allow her to continue. Does anybody object?

The Vice-Chair: Is there consent to let her continue? Okay. Go ahead.

Ms. Kim: Thank you. The reduction in all these symptoms also improved my exercise regime, which further improved my overall health. I think about what could have happened to me if these biologic breakthrough drugs were available back in the 1980s. I think about what can happen and is happening to patients currently who have access to these medications early in their diagnosis. With the reduction of their symptoms, patients are able to stay active in their community, with work, study and play. This will mean a reduction in the demand for joint replacement surgeries, hospitalizations, doctors' visits, allied health professional visits, home-care service utilization and long-term-disability assistance.

My experience convinces me that the inclusion of quality of life in the rapid review process is vital to all Ontarians. Thank you.

The Vice-Chair: Thank you very much for your presentation.

CANADIAN HEALTH COALITION

The Vice-Chair: Now we're going to call on the Canadian Health Coalition. Canadian Health Coalition is here with us? If they're not, we're going to move to the Employer Committee for Health Care—Ontario. Is the coalition here? Okay. You can start when you're ready.

Mr. Michael McBane: I'd like to thank the committee for the opportunity to appear before you. I'm Michael McBane, national coordinator of the Canadian Health Coalition. We're a national organization with member groups across Canada, including the Ontario Health Coalition and their local groups. We don't normally appear before provincial Legislatures, but Bill 102 has important national implications.

A couple of quick messages: First, we fully support the goals and objectives of Bill 102. It's extremely important that public drug plans be run on the basis of value

for money and evidence-based decision-making when it comes to drug utilization.

As you know, Canada has a serious drug problem. The amount spent on prescription drugs in 2005 alone was \$20 billion. That doesn't count what we're spending in nursing homes and elsewhere. The rate of drug increase, as you know, is rising three times as fast as the rate of inflation. In a sense, Canada's drug problems can be summarized in three ways: overuse, underuse and misuse. That's why we need much more serious management and approach towards pharmaceuticals.

What's interesting in the brief I handed out—there is a chart that shows drug expenditures rising exponentially. Underneath is a chart showing medicare expenses, which are flat at 4% since 1980. So it's very odd that there are advocates saying that medicare is unsustainable and we should have more private insurance, when it's private insurance that's not sustainable. Therefore, it's time to expand medicare, to expand public drug coverage.

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We would like to urge this committee to reject the proposed amendments from Rx&D, the multinational lobby organization on behalf of the pharmaceutical companies in Ottawa. Their proposed partnership has four principles, which we have done a reality check on. We would like you to reject out of hand the notion that drug plan managers should be partnering with drug companies. As you know, drug companies are in the business to make a profit. In contrast, managers of the Ontario drug benefit system are mandated by law to act in the public interest to provide access to the best medicines at the best price for the most people. Public health legislation, federal and provincial, removes the delivery of health services from market rules to ensure the same right of access to health services based on need. The public health legislation means unprofitable services, populations and regions are not abandoned.

Pharmaceutical corporations are traders. Traders exploit vulnerability. Public health officials are guardians. Guardians protect the vulnerable. No partnership with drug companies on the running of the Ontario drug program.

It's interesting that the chairman of Rx&D has severely criticized Bill 102, and is critical of the fact that you're trying to get value for money. I would submit to this committee that the CEO of GlaxoSmithKline and chair of Rx&D does not practise what he preaches to this committee. If he did and failed to use the size and economic power of his corporation to secure the best prices from his suppliers, he would be fired.

A couple of quick comments on some specific proposals: We do not believe that the goal for the Ontario drug plan should be speedy drug approvals. The issue is quality. Speed is not your primary objective when you're assessing the effectiveness of new drugs. New drugs are inherently not safe. Drug companies are known to suppress scientific data. Quick reviews are not necessarily in the public interest if they're not of high quality. New drugs are being rushed to market on dubious and exaggerated

gerated claims that are not supported by independent assessment. Let me give you a recent example.

Since speedy drug approvals started happening at the FDA in the United States, 18 major drugs have been recalled due to safety concerns. Here's the pattern: Speed up the approval, the drug crashes and thousands of people die needlessly. That should never be the objective of the Ontario drug plan.

The list of the 18 drugs includes Baycol, Raplon, Lotronex, Propulsid. And of course we know about Vioxx and Bextra. Members of this Legislature will recall that Propulsid is the drug that killed Vanessa Young in March 2001. The approval of these new drugs and the subsequent tragic loss of life they are suspected to have caused were entirely needless. In the case of Vanessa Young, the manufacturer knew its product was killing patients. It suppressed the information and continued to market the drug.

I therefore recommend that the Ontario government protect the integrity of the drug program, continue to work with the Common Drug Review at a national level and maintain this process to ensure that safety and cost-effectiveness standards are maintained on a national basis. Quality reviews should be the goal, not speed. Please do not abandon the Common Drug Review process. Ontario must not go it alone on assessing drug safety.

Secondly, we would urge that the Ontario government work with its provincial, territorial and federal counterparts to develop a national independent research network, arm's length from the drug industry, to evaluate new and existing therapies in the real world.

A new proposal that I'd like to comment on as well is the issue of requirement to provide information. It's important that the Ontario government require drug manufacturers to provide the following information: (a) full descriptions of all clinical trial protocols; (b) full reports of all clinical trials; (c) full report of safety data collected outside of the clinical trial setting, including details of all reported adverse events, serious adverse events and deaths in other jurisdictions where the drug is already marketed. If you don't have those data, you should not be paying for these drugs.

All clinical trial data should also be made public.

On the issue of interchangeability and generic substitution, I would support what the Brampton Health Coalition has just said about reference-based pricing and the excellent experience of the government of British Columbia and other jurisdictions.

Interchangeability, substitution and various forms of reference-based pricing programs reduce the profits of pharmaceutical manufacturers. That's why they are before this committee on this bill, opposing these measures. Drug companies took the government of British Columbia to court over this and the arguments were rejected.

I recommend, therefore, that the Ontario government consult effectively with physicians, nurse practitioners and pharmacists on procedures to handle exemptions and

the overall administration of an interchangeability and substitution program.

Secondly, on this issue, I recommend that the Ontario government prepare for an aggressive lobbying campaign, funded by big pharma but carried out by seniors, disease, patient and phoney consumer groups. You should plan public relations campaigns to educate the public about the interchangeability of drugs involved, the actual cost savings and the ability to reinvest those savings in expanding drug coverage.

On the issue of using the money to expand coverage, we would urge that the Ontario drug plan use savings to expand coverage for the most vulnerable citizens in Ontario, including people who are on social assistance who would be working if they could get drug benefit coverage for their medical conditions.

In conclusion, the Canadian Health Coalition supports the objectives of the bill. We strongly encourage Minister Smitherman and the Ontario government to continue its work within the context of a national strategy for pharmaceutical management, utilization and access. Ontario is the senior partner in federal-provincial-territorial work.

Bill 102 is an important part of the work to improve and sustain Canada's success story: our public health insurance system. It's time to expand it. Ontario and the rest of Canada need a national drug plan that pays only for drugs that have been independently established to be cost effective and safe. It should pay the entire cost, single-dollar coverage. This will save lives and millions of dollars.

Thank you very much for your time.

The Vice-Chair: Thank you, Mr. McBane, for your presentation. There's no time left.

EMPLOYER COMMITTEE ON HEALTH CARE—ONTARIO

The Vice-Chair: Now we move on to the Employer Committee on Health Care—Ontario. You can start whenever you're ready. I imagine you know the procedure. You have 10 minutes to speak. If you wish, you can speak for the whole 10 minutes, or you can divide it between questions and speaking.

Ms. Sandra Pellegrini: Mr. Vice-Chair and members of the committee, good morning. My name is Sandra Pellegrini. I am a principal at Mercer Human Resource Consulting. I'm here today with Annie Boulianne, manager of pensions and benefits at Inco Ltd., representing the Employer Committee on Health Care—Ontario, otherwise known as ECHCO.

We would like to thank the committee for inviting us to contribute to the deliberations on Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act. We are here in support of Bill 102, the Transparent Drug System for Patients Act.

We address three points of consideration today, as they affect Bill 102 and the development of public policy concerning pharmacare:

(1) Employers' objectives and roles as stakeholders in the health care system;

(2) The components of Bill 102 identified by ECHCO as fundamental to a cost-effective drug system; and

(3) Continuing challenges and concerns.

ECHCO represents Ontario's largest employers committed to the continuing financial health of our health care system and the health and productivity of Ontarians. ECHCO believes that as a stakeholder, its objectives are most closely aligned with government on the issue of health care, where the health and productivity of Ontarians in the most cost-effective manner is the objective of the health care programs. A structure of collaboration between government and employers is critical.

The competitive advantage of our province is impacted by the current and future senior dependency ratio, and therefore on the health and productivity of actively employed Ontarians who will work to support our senior population. Ontario's provincial drug program is funded in large part by the employer health tax. These points, more than any others, speak to the need for Ontario's private and public plans to work together.

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Economically, the health care system remains one of the only competitive advantages to Ontario employers. Drug expenditures constitute the most significant portion of an employer's health plan liability, subject to the greatest inflationary pressure and often without the ability to affect changes under legacy programs and/or collective agreements.

Our presentation today is made on behalf of the employer interest. Our submission to the Drug System Secretariat in December 2005 proposed a more active and distinct role for employers as a group to play in the development of public pharmacare policy. This new role for employers recognizes the dual health care mechanism as one that must work together in order to achieve long-term cost efficiencies and competitive advantage.

Private payers critically need a legislative framework that addresses cost containment and market efficiencies. Overall, we believe the intent and direction of Bill 102, the Transparent Drug System for Patients Act, supports the interest of employer-sponsored plans as well as the long-term interest of the ODB program. We formally commend the Drug System Secretariat, led by Helen Stevenson, not only for the scope and depth of their review, including collaboration with employers as a stakeholder, but also their ability to assimilate the data in the form of a practical and doable package of reform.

ECHCO concurs with the following remarks made by Minister George Smitherman to the Economic Club on May 15, 2006:

(1) "We need to make our drug system more efficient. We need to make it more accountable and transparent. We need to get better pricing—pricing that reflects the volumes of drugs we purchase."

(2) There are "huge opportunities to improve patient access to drugs, and for Ontario to receive better value

for money we spend on the provision of prescription drugs."

(3) Drug costs are recognized as "the single fastest-growing area of health care in Canada."

(4) "The private sector needs government support to help manage drug costs, the most significant factor in company drug plans and a matter important to Ontario's economic competitiveness."

Ms. Annie Boulianne: Employers are experiencing double-digit exponential cost increases that are not sustainable long-term. We are relieved by the minister's remarks in as much as they recognize a fact not historically understood: It is employers, not insurance companies, who provide and fund the private health care plans that complement the government plans such as ODB.

ECHCO fully supports the proposed changes under Bill 102 regarding:

- the designation of products as interchangeable where they have the same or similar active ingredient, and in a same or similar dosage form;

- the designation of Health Canada approved generic drugs as interchangeable with brand name drugs. These two changes alone will represent a saving for the major employers of \$30 million a year;

- an improved conditional listing, where the result is improved access to new drugs as well as other drugs requiring special criteria to be met, such as the current limited use program;

- the intention to secure more competitive drug prices in the Ontario marketplace;

- the elimination of manufacturer rebates to wholesalers, operators of pharmacies or companies that own, operate or franchise pharmacies when those rebates are directly tied to the net cost of the drug product;

- the new payment structure for pharmacy services; and

- prescribing guidelines that will promote appropriate use of medications.

ECHCO believes that sustainable programs, whether privately or publicly funded, are best addressed by improving health outcomes and economic efficiency. As the population ages, there will be a shift in needs from acute to non-acute types of services and greater demands for longer-term care.

We leave the standing committee a copy of our 2005 submission to the Drug System Secretariat, where the following concerns with the current system were addressed: lack of accountability and excessive consumption; the lack of transparency surrounding the design and administration of the ODB formulary; drug pricing; inefficiencies in the delivery system, or no opportunity for off-formulary interchangeability; and the cost of catastrophic drugs.

Challenges and concerns: Bill 102 responds to all of the above-noted concerns with the exception of catastrophic drug coverage. This is a major issue, respectfully tabled today as an ongoing concern.

Except in unique circumstances, employers are not health care experts. Outside perhaps personal experience,

we don't know about cancer, diabetes, chronic pain or the right medication for a particular medical situation. Drug plan coverage, especially catastrophic drug plan coverage, is a societal issue. While Bill 102, in our opinion, offers opportunity for cost-effective systemic changes, catastrophic drug costs remain a highly significant issue.

The recent NPS—National Pharmaceuticals Strategy—stakeholder sessions identify this issue as one of the top priorities nationwide, together with the issues of expensive drugs for rare diseases, a common drug formulary, drug safety and effectiveness, as well as drug pricing and purchasing. We strongly encourage the Ontario government to incorporate, where possible, the NPS analysis in their work on the redesign of the ODB program.

In closing, we appreciate and thank the standing committee, as well as the Drug System Secretariat, for ECHCO's contribution to this process. Government can learn from business. Business needs a legislative framework. There is a wealth of information between the two programs, that is, the public and the private sector. We look forward to further collaboration. Thank you very much.

The Vice-Chair: Thank you very much for your presentation, but I'm going to ask you to state your name for Hansard.

Ms. Boulianne: It's Annie Boulianne.

The Vice-Chair: Thank you very much.

We have one minute left. We're going to give it to the Conservatives.

Mr. John O'Toole (Durham): Thanks very much for your presentation. Having spent some time in personnel in a large company, I'm familiar with some of the implications of both current and future employees, contract negotiations and future liabilities. It's a huge issue going forward, because you really don't know what you're agreeing to fund going forward with cancer and all these kinds of micro improvements in pharmaceutical.

I have a couple of very specific questions in the limited time I have. One is, who invited you? Second, do you support the bill? Third, a comment, and I'll start with that. You said in here the employer health tax pays for a lot of the pharmaceuticals. It is a huge and pressing issue, pharmaceutical costs, both public—but for the most part, pharmaceuticals are not covered unless you're a contract employee, on disability or a senior. They're not covered; they're private, and have been always. So for the most part, most of us pay out of our pockets, unless you have a drug plan, like a large company where you work.

Ms. Boulianne: And that's what we're representing, yes.

Mr. O'Toole: The second thing is the tax also—

The Vice-Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: —the employer tax—

The Vice-Chair: Thanks. You're out of time. Mr. O'Toole, your time has expired.

Mr. O'Toole: Unanimous consent for a couple more questions?

Interjections.

Mr. O'Toole: They're shutting down debate, so they really don't want—

The Vice-Chair: I'm not shutting down debate.

Thank you very much for your presentation.

GREAT ATLANTIC AND PACIFIC CO. OF CANADA

The Vice-Chair: Now we have the Great Atlantic and Pacific Co. of Canada. Welcome. You can start when you're ready.

Mr. Ian Lording: Good morning, and thank you for allowing me to appear before this committee to discuss Bill 102, the Transparent Drug System for Patients Act.

My name is Ian Lording, and I'm the director of pharmacy services for the Great Atlantic and Pacific Co. of Canada. I'm a working pharmacist, after graduating from the University of Toronto in 1998.

Our history in this province is deep and goes back to the 1920s, when the first A&P store opened here. Our roots in community pharmacy are almost as deep: We opened our first pharmacy in Ontario a few kilometres from here in Etobicoke almost 30 years ago. We employ over 500 staff members, inclusive of pharmacists, pharmacy technicians and support personnel. We are members of OPA, OCDA, CACDS and CPHA, all professional associations that represent pharmacy practice and business here in Ontario and across the country.

Let me make it clear from the start that A&P is non-partisan. I'm here today to represent the interests of our pharmacies, our employees and, most importantly, the patients we serve.

Most of you will know A&P as a grocery store. You've probably been in one of our 237 stores across Ontario, whether an Ultra Food and Drug, Food Basics, The Barn, Super C, Loeb or a Dominion. But we are also a major provider of pharmacy services, operating 77 pharmacies from Brockville to Thunder Bay to Windsor.

We are committed to pharmacy in this province. We see it as an integral element of our business model, that of one-stop shopping and presenting an environment where pharmacy and nutrition coexist—two important pillars to overall health and wellness.

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What's unique about us is that we're a mid-size pharmacy retail chain, sort of the Everyman of the pharmacy world. It's for this reason that people studying the potential impacts of changes like Bill 102 use us to model effects on average or median pharmacy operations.

You've heard a lot about the expected effects of Bill 102 on our profession and on our businesses, and I won't repeat that now. Instead, I would like to correct some of the myths people have about chain pharmacy and offer solutions.

One commonly held misconception is that pharmacies in retail outlets are loss leaders that fund and drive traffic into our stores. This is far from the truth. Our business model mandates that our pharmacies must be sustainable

if we are to keep them open. If Bill 102 goes through unchanged, we will lose this sustainability and we will be forced to consider options such as reducing hours, charging for services we currently provide for free, increasing dispensing fees for cash-paying customers and potentially closing some pharmacy locations. It is a bitter irony that those pharmacies most at risk are those that provide a high level of patient care in underserved communities.

Let me also clarify a recent commentary suggesting that large chains can increase prices in other areas of the shop—over-the-counter products, health and beauty aids and so on—to offset the losses created by Bill 102. Our pharmacies derive almost all—80%—of our sales from prescriptions. Only 20% of our business is non-prescription. It's obvious, then, that this is not an option for us. But, fundamentally, it's not an option because it's not fair for patients and consumers. What this suggestion means is that we would, for example, increase prices on baby food and incontinence products in order to make up for the shortfall from the ministry underfunding the services it demands of us. Members of the committee, pharmacy services should not be subsidized on the backs of seniors and working parents.

Pharmacy has had an inherent tension since its birth in Ontario and the first attempts to regulate it in the 1850s. This is the relationship between the professional side—working with physicians and health care providers to help them make the best prescribing choices, and helping patients understand the medications they are taking, their risks and their benefits—and the business side.

People trust pharmacists. Some 77% of patients in a recent study had more confidence in their pharmacists than in any other health care provider. Pharmacy is unique, because no other business that I know of uses its revenue from the business side to subsidize the professional services side. This is especially important because, although the patients we serve recognize the value of our services and turn to us time and time again when they need help, this government does not fully understand the contributions we are making to front-line health care across Ontario. We wouldn't expect doctors to run a retail operation on the side to pay for the patient care they deliver, but somehow we have come to expect this from pharmacy. But we have taken on this role and have structured our businesses to enable us to deliver patient care with, until now, no dedicated funding from the government. In an age of constrained budgets and ever-increasing demand for health services, health care providers of all types are doing the same. We all know that health care funding is limited and, just like Minister Smitherman, we are working to get more value for the money we spend.

Throughout the health care system, here in Ontario and in the entire developed world, health care providers like pharmacies are making arrangements with their partners to get more for their money in the interest of patient care. These arrangements must be transparent if we are to protect the interests of all participants in the health care system.

That's why A&P has implemented what we consider the gold standard in our supplier relationships. Our manufacturer supplier agreements clearly outline expectations, ethical guidelines and a code of conduct ruling such transactions. The control mechanisms as a publicly traded company are in place and can withstand rigorous public and regulatory scrutiny, including that of the Sarbanes-Oxley Act. It's tough and it's demanding, but it gives us the sort of transparency we think is needed to protect our business, our suppliers, our partners—like the government—and our customers.

The Minister of Health calls these value-added programs or rebates we receive nefarious and murky, but as you can see, in the case of A&P, this is simply not true. The minister also says that rebates are keeping generic drug prices high, but we know this is not the case and that there is in fact no demonstrated link between pricing and rebates. In fact, under proposed legislation, the executive officer strictly controls price increases, eliminating this possibility.

I hope I have gone some way to convincing you that they are nothing close to nefarious, and that solid controls are in place in our pharmacies to prevent them from becoming so. That is why my colleagues and I have developed an approach that will enable the government to capture information on value-added programs in pharmacy and to validate it. I've already explained how the rigorous processes work at A&P. I am confident that together, pharmacy and government can build a solution that delivers the same clarity and accountability.

Members of the committee, it is high time we make Ontario's publicly funded drug programs work better for patients, health care partners and taxpayers. It is time to fix the business side of pharmacy so that pharmacists can spend the time to work with patients to save this system money. It is time to introduce clarity into our drug system. It is time to work with all health care partners.

Now is not the moment to take draconian action that will do a disservice to patients. I therefore urge the McGuinty government to take the time to understand the implications of this legislation. It is complex and far-reaching. It merits careful study and considered implementation. Take the time to listen to and understand stakeholders and work with pharmacy to comprehend the complexity, value offerings and uniqueness of a business that not many understand. Take the time to amend this bill to enable community pharmacy to survive in the towns across Ontario and to continue to deliver the patient care we've come to be recognized for.

Our organization has worked closely with OPA, OCDA and CACDS in developing amendments that address the concerns of government and allow pharmacy to remain sustainable. Our offer of assistance is on the table. The profession wants to help, it can help and we can make a Bill 102 that works for everyone.

The Vice-Chair: Thank you very much. We have one minute left. We will give it to Ms. Martel.

Ms. Martel: Thank you for being here today. I want to focus on your point, "The minister also says that re-

bates are keeping generic drug prices high, but we know this is not the case and that there is in fact no demonstrated link between pricing and rebates." Can you give us some more information about that, please?

Mr. Lording: I'm not familiar with any particular study that shows that the payment of rebates adversely affects drug prices and them going higher. The reference I made further was that under the new legislation, the executive officer controls price increases. So regardless of what the generic manufacturers may or may not pay, inevitably the drug prices will not go higher.

The Vice-Chair: Thank you very much for your presentation.

ALLIANCE OF SENIORS

The Vice-Chair: The Alliance of Seniors is here. You can start when you're ready, sir. You know the procedure. You have 10 minutes.

Mr. Jack Pinkus: Thank you for giving us this opportunity. My name is Jack Pinkus. I'm past president of the Alliance of Seniors. I have with me today Mr. Derrell Dular, our coordinator and executive officer.

The Alliance of Seniors was founded in 1993 and it is an active, diverse, and growing non-partisan coalition of individuals and organizations representing the concerns of over 300,000 older adults residing in the greater Toronto area. Our mission is to preserve and enhance Canada's social programs on behalf of present and future generations; to promote a society where all persons have an equal opportunity to live with dignity, to realize their potential and to participate in the democratic process; and to educate and raise public awareness about the values, life experiences and lessons learned by Canada's older citizens.

As a coalition, the alliance does not presume to speak for individual organizations nor represent their specific positions. Rather, the Alliance seeks to build consensus upon the shared values amongst these groups when addressing issues of mutual concern.

Alliance of Seniors participating organizations include: Association of Jewish Seniors, Bernard Betel Centre for Creative Living, Canadian Institute of Islamic Studies and Muslim Immigrant Aid, Canadian Pensioners Concerned, Care Watch, Caribbean Canadian Seniors, Concerned Friends of Ontario Citizens in Care Facilities, Congress of Union Retirees of Canada, Elder Connections, Habayit Shelanu Seniors, Jamaican Canadian Association, Korean Inter-Agency Network, Older Women's Network, Ontario Coalition of Seniors Citizens' Organizations, Ontario Federation of Union Retirees, Riverdale Seniors' Council, Toronto Seniors' Assembly, Yee Hong Centre for Geriatric Care.

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Mr. Derrell Dular: Our concerns regarding Bill 102, the Transparent Drug System for Patients Act: The Alliance of Seniors, its affiliates and friends endorse the principles of the Canada Health Act: comprehensiveness, universality, accessibility, portability and public adminis-

tration. We recognize the important role of prescription medicines in health care and support the preservation and enhancement of the Ontario drug benefit program and the Canadian Health Coalition's proposals for a national pharmacare plan.

We also recognize that prescription drug costs constitute the fastest-rising component of health care costs in Canada and seriously threaten the sustainability of existing provincial drug plans. For many years, the alliance has advocated at both federal and provincial levels to contain rising drug costs and for faster access to affordable medicines for all Canadians.

Bill 102 appears to address a number of our concerns. We are very pleased that in Bill 102 the government has chosen not to increase fees or copayments for seniors. We're also pleased that Bill 102 does not reduce the number of medicines covered by the government's drug plan. Many seniors are on fixed incomes, and government decisions to cut benefits and increase user fees would have a dramatic impact. We would be happier still if such fees were eliminated altogether.

We also support the government's move to remove barriers to the interchangeability of equivalent, lower-cost generic drugs and its intention to negotiate better prices from both brand name and generic drug companies. The government pays over \$3.5 billion a year for drugs, and it should be able to use that buying power to save taxpayers' money that can be reinvested in other aspects of health care.

With regard to drug pricing, marketing and related costs, we are concerned that the new regimen proposed by Bill 102 be sustainable without a reduction in accessibility or quality of pharmacy services. Does Bill 102 make adequate provision for alternative compensation for the health care professionals who advise and deal most frequently with the users of prescription medications?

While we are critical of the practice of drug price rebates from drug manufacturers to pharmacists, we are also aware that in order to remain viable from a business perspective, pharmacists must receive sufficient compensation to realize a livelihood and to cover their inventory and operating costs in order to continue to provide health care services that communities rely upon.

Over the past 20 years, the pharmacists' dispensing fee, as regulated by government, has been increased only a fraction of the rise in the consumer price index for the same period. It could be argued that the difference has been made up and the real costs of their professional services deflected by the manufacturer rebates. We would prefer a fairer, more transparent form of compensation for our pharmacists.

Mr. Pinkus: I would like to add a comment that's not in our regular brief. I'm rather in a unique position as a senior and as a retired pharmacist, so I can look at perhaps the two sides of the question.

As a statistical example, seniors represent 12% of our population but consume about 40% of medications. Therefore, pharmacists play an important role in their medication system. The government should realize that

seniors always see the same pharmacist for medications. We do this because our medication needs are complex. Any system change that would threaten this would be problematic for our members.

We thank the committee for this opportunity to express our support for and concerns about Bill 102.

The Vice-Chair: Thank you very much for your presentation. We have about three minutes left. We can divide it three ways. We'll start with Mr. Peterson.

Mr. Peterson: Thank you very much for your presentation. You obviously, as a pharmacist and as a senior—and I'm quickly approaching that age myself—have run into this tough paradigm of huge costs, increasing, to not just sustain life but also sustain a quality of life. The problem is, you're putting government in the role of deciding both quality-of-life and sustainability-of-life questions. These are pretty tough questions for us personally, let alone for a government to make decisions. Have you got any insights on a mechanism or any ways that we can make sure that everybody is fairly treated without having total runaway costs in the pharmaceutical area?

Mr. Pinkus: Well, that's perhaps a difficult question to answer. Certainly I have spent many years behind a pharmacy counter and that situation does perhaps come up. I think, from the seniors' perspective, we trust the information the pharmacists give us. We need that information. We need the support that pharmacy has to offer. As far as putting the government in that position, we would like to certainly help in that matter if we can.

The Vice-Chair: Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation. You've indicated that you are concerned about the fact there may be a reduction in the accessibility or quality of pharmacy services. Certainly, we've heard from many, many people—pharmacists, those in pharmacy—that that's exactly what this is going to do. In fact, I have a petition here from students at the school and they are very concerned that Bill 102 is going to create, as they say, additional barriers that would prevent them from helping Ontarians in the way that they can and that they should. They are nervous about their future as pharmacy practitioners in Ontario. So the threat is real.

What would you encourage this government to do to make sure we don't see the closure of pharmacies and we don't see the elimination of pharmacists in the province doing the work that they love to do?

Mr. Pinkus: I'm sorry. Could you—

Mrs. Witmer: The work that they love to do: What should the government do? This bill, as it is, is going to reduce the number of pharmacies, according to the data that we've been presented with.

Mr. Pinkus: I see it as a big problem, certainly, and a problem for seniors in having accessibility. Certainly it would be very difficult for seniors to travel over long distances if some of the rural pharmacies close. That would be a real chore for them to access their needs, much more so than any other segment of the population.

Mrs. Witmer: I agree.

The Vice-Chair: Ms. Martel.

Ms. Martel: Thank you, both of you, for being here this morning. I just want to highlight two of the concerns you raised: Does this bill make adequate provision for compensation for these health care professionals, i.e. pharmacists? And it could be argued that the difference in what pharmacists have not seen over the years and their real cost is being made up by some of the rebates.

I think that during the course of the public hearings we have heard that repeated by a number of pharmacists, particularly small, independently owned. My concern remains that unless we see some significant changes in how compensation is going to be dealt with, we are going to see a significant loss either of small pharmacists or in the services that they're providing.

I agree with you that those are very significant concerns. In many cases, these front-line professionals are the only health care providers in many of our smaller communities. We need to be sure they're compensated properly so they continue to provide that service.

Mr. Pinkus: And since seniors are the ones who access them more often, it would be particularly hard for them.

Ms. Martel: I agree.

The Vice-Chair: Thank you for your presentation. The time is expired.

I want to call on the Canadian Centre for Policy Alternatives. Is anybody here? No?

ONTARIO FEDERATION OF UNION RETIREES

The Vice-Chair: Then we'll move to the Ontario Federation of Union Retirees. You can start when you're ready. Before you start, please state your names for Hansard.

Mr. Orville Thacker: Good morning, Mr. Chairman and members of the policy committee. My name is Orville Thacker. I'm president of the Ontario Federation of Union Retirees. With me this morning is Joyce Cruickshank. She is the secretary of the Ontario Federation of Union Retirees.

Our main purpose for being here this morning is to let you know that we're concerned about our public health care in the province of Ontario. We're here to support portions of Bill 102 because we feel that anything that can reduce the costs of public health care, provided it doesn't interfere with services, is a step in the right direction. I'm going to let Joyce present our brief now.

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Ms. Joyce Cruickshank: As you can see from the brief, if you have it in front of you, our organization of union retirees has many, many affiliates throughout the province. Most of them are union retiree organizations, and they span the auto workers, steelworkers, public workers—the whole gamut of retired union workers across the province. We have affiliations, of course, with the Ontario Federation of Labour, the Canadian Labour Congress and the Congress of Union Retirees of Canada. We're not funded at any level by government, not funded

by business, and we really have nothing to do with pharmaceutical companies at all. We want to protect our health care system from being downgraded, and this continual escalation of drug costs is not going to help that at all. We want to ensure access to the system while ensuring protection against dangerous or unnecessary drugs.

As Orville has said, we're in favour of some aspects of Bill 102 and not in favour of others, so we want to very simply and clearly make you aware of what those are. Patient safety is an overriding concept throughout our whole presentation.

We support the government's efforts to control the cost of drugs in Ontario. One of these ways, of course, is widening the use of generic drugs and widening the scope of what will be considered equivalent to brand name drugs. As well, dropping the price of generics by 20% to 50% of the brand name products is commendable and should work to lower the cost of prescriptions without harming patient care in any way. Although some of the people we represent still have a drug benefit package that is associated with their former employment, many do not, and any lowering of their health care costs helps them in their senior years as well.

We support the elimination of rebates for pharmacies, which would allow the government to pay the actual transaction price and save money. If some pharmacies, particularly in northern and rural areas—I've heard concerns expressed about that—are arguing that this reduction in their revenue will cause them to close, there's got to be another way to ensure access to pharmacies. Their financial viability should not be based on rebates from drug companies. There has to be some other way to do that.

The government should be able to save large amounts of money by buying in volume and being able to negotiate over prices, although I don't know if negotiating with the major pharmaceutical companies would be a very fun thing to do—kind of like negotiating with the boss. Decreasing the markup on drugs from 10% to 8% will reduce costs without harming patients.

I think the representation of patients on councils regarding the formulary is a very, very good idea, but we need to make sure that those patients have protection against being influenced by the drug industry. The drug industry is so powerful already that it needs no help in this quarter.

Some of the things we don't like in the proposed legislation: the appointment of an executive officer by order in council. That person would report back to the very government that appointed him or her and not be accountable to the public. They're not elected; they're appointed. The very sweeping nature of the powers given to this executive officer is scary. They will have the ability to set prices for drugs, decide on interchangeability, and add or remove drugs from the formulary, just to mention some of the areas and the powers. I think that to place this much power in the hands of an unelected official is wrong, very simply wrong. We would support additional

initiatives to ensure that this executive officer operates with the utmost in public transparency, with a minimum of influence from the drug industry.

There is no mention of what will be done with any savings realized from this legislation. Any savings should be reinvested in health care or other social programs, and this information should appear within the legislation.

We would support the government to advocate at the federal level for a national pharmacare program to help improve our access to drugs necessary to maintain or improve health right across the country. Most industrialized countries have a national pharmacare program; we do not, but should have one.

If we were to look into the future, without something being done about controlling the rising cost of drugs, some of the implications are: Faced with ever-rising costs, employers scale back their workplace benefit packages. Who do you think their target will be? We already know: The target is retirees. Retirees can't vote on contracts in most cases, and they aren't visible in the workplace, so they have difficulty being seen and heard. I do know that one company has already reduced the benefits they give to their retirees by not allowing any increases to cover cost of living. That's happened in my own area, so I know first-hand what that has done to people. As well, it's easy to convince people that retirees use up a disproportionate amount of benefit package dollars just because they're older and more likely to be sick, even if that's the wrong attitude, and probably inaccurate as well. When retirees cease to be covered by a private workplace-related benefit package, they must fall back on the public system, and we all pay for that.

If we do nothing, drug costs will continue to soar, forcing government to further cut the number of the types of drugs covered by its plan. This will only force low-income individuals, families and seniors further down the economic ladder, making disastrous decisions about prescriptions versus food, versus shelter. They shouldn't have to do that.

We urge you to resist the lobbying efforts of the drug industry and their cohorts and work towards improving Bill 102 in the ways we are suggesting. Thank you very much. Questions?

The Vice-Chair: Thank you for your presentation. Yes, we have three minutes left that we can divide three ways. We'll start with Mrs. Witmer.

Mrs. Witmer: Thank you very much, Joyce and Orville. You always make a good presentation. I do appreciate your being here on behalf of the Ontario Federation of Union Retirees. You certainly make some very good points. One of the concerns I've had you do share. You talk about the appointment of the executive officer and the amount of power. This individual can make decisions, but there's no appeal process and there's no transparency. Do you have suggestions as to what the government should do to make that process and that office more accountable?

Mr. Thacker: I don't think we have any final suggestions. It appears to me that there is machinery in place

now to do that job. It doesn't have to be another bureaucracy set up.

Mrs. Witmer: Okay.

Ms. Martel: Thank you very much for being here this morning, both of you. I want to focus on the appointment of the executive officer. What's interesting is that there's already a director of the drug programs branch at the ministry. I don't know why the director, that position, is not staying in place, because then we're going to have some accountability. If that person stays in place, the accountability or the checks and balances also come with making sure that some of the things do continue to appear in regulation, rather than the executive officer having that power and being accountable to nobody. There are some very significant powers that are being added here. Can you say why you are concerned about that and why you'd like to see some checks and balances on that particular power?

Ms. Cruickshank: I don't think it's a good thing for any one position to have the volume, just the sheer amount of power that this person will have, and they're an unelected official, a bureaucrat. They are not in any way reporting back to people who put them in place, other than the government who appointed them. It just goes against the grain.

I would much prefer to see the current type of position that's there. I believe that you call it "director of—"

Ms. Martel: Director of the drug programs branch.

Ms. Cruickshank: Even if that has to be massaged or adjusted in some way, shape or form. I understand that through the regulations and for some of the kinds of decisions this executive officer would make, they have to go back to the government to be approved there. So there is a check and balance there. People in government are accountable to their electorate.

The Vice-Chair: Thank you.

Ms. Kathleen O. Wynne (Don Valley West): Thank you very much to both of you for being here. You made a statement about the representation of patients on councils regarding the formulary: You're happy about that. You think that's a good way for the community to have input. But you made a comment about protection for those patients against being influenced by the drug industry. Could you talk about what you're envisioning there?

Ms. Cruickshank: In what way?

Ms. Wynne: What form would that protection take? Had you thought about what that would look like? Our assumption is that the patients have good opinions and good information to bring to the process. You're saying that there should be some protection built around them. I just wondered if you'd thought about what that would be.

Ms. Cruickshank: I don't know if it would have to take the form of legislation. Not banning the drug industry from having input, by any means—of course they should have to—but not allowing them to influence patients who are there.

Many of our drugs aren't covered under the formulary. If a patient were to be on the council and assisting with decisions, and were offered the kinds of drugs that they

really need to have at a better price, I think that's undue influence.

Ms. Wynne: So there should be controls around conflict of interest, that kind of thing.

Ms. Cruickshank: Absolutely.

Ms. Wynne: Okay. Thank you.

The Vice-Chair: Thank you very much for your presentation.

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CANADIAN CENTRE FOR POLICY ALTERNATIVES

The Vice-Chair: I believe the Canadian Centre for Policy Alternatives is with us here. If they're ready, they can come forward and present. Can you state your name, please, before you start?

Ms. Armine Yalnizyan: Good morning. My name is Armine Yalnizyan. I am representing the Canadian Centre for Policy Alternatives. Thank you very much for making the time to hear my presentation.

I want to send a very clear message to all of you from all the parties that I think this is a bill that should be supported, why you need to support it now, not later, and why this is a model not just for Ontario but for the nation and the leadership role that this government can play on the national stage, using this kind of legislation.

Everyone on this committee knows, everyone in each party knows and every consumer knows why this kind of legislation is very timely. First of all, the efficiencies that can be gained are huge, and the potential for improving equity is also incredibly important.

As elected officials of three separate parties, your interest should be firmly behind this initiative. The Conservatives tried to introduce price-volume controls in 1998. The NDP stand for preserving and enhancing access to basic services. The measures in this bill meet both tests of fairness and pragmatism, seeking efficiency and equity.

I don't need to go over the growth curves, the growth rate in drug spending, the growth rate in health care spending versus the growth rate of the economy and provincial revenues. Quite apart from those mathematics, which simply put more pressure on you to act, to manage, not just spend, these are the following facts:

Ontario is the largest purchaser of drugs on the continent, just behind the veterans health administration in the US. The VA provides health care to 5.5 million veterans of the US wars out of 7.5 million veterans. They spend about \$4 billion a year on drugs, and they cover 24,000 pharmaceutical products. Here in Ontario, we spend \$3.5 billion a year on drugs instead of \$4 billion. We're the second-biggest purchaser on the continent. We cover 2.5 million people instead of 5.5 million people, and we spend that \$3.5 billion on just 3,000 products, not 24,000 products.

My question to you as a woman, as an economist, as a single mother is: Why pay retail? There are huge dis-

counts that are at our disposal here if we use the muscle power that this kind of a purchaser has behind it.

Some 33% of all your drug costs that you spend on an annual basis goes to two pharmaceutical classes: cardiovascular and those drugs that reduce cholesterol. There are huge savings waiting to be made here, as we know from the Cipro case in the wake of the anthrax scare just after 9/11.

The major strokes in this bill address the real issues: We pay too much for generics. Our only price control legislation is the 70% rule on their price vis-à-vis brand name products. That is being brought down to 50% in this bill. That's very reasonable, and it's about time that we're looking at those kinds of price controls on generics.

We also pay too much for patent drugs. While the PMPRB regulates the price per unit, we do not take full advantage of price-volume agreements like they do in the US. We have tried in the past because of the regulations that were brought in by the Conservatives in 1998, but we can see that with the VHA, purchases are made at discounts ranging from 24% to 60% below drug manufacturers' most favoured, non-federal and non-retail consumer pricing.

So we have room to move here and if you use your bulk purchasing ability, you can achieve significant savings. In fact, it has been estimated that this bill will lever almost \$300 million a year in cost savings. That's almost 9% of our bill. Why would any government turn that down? We're growing at a rate of over 9% a year. It is responsible governance to introduce this type of a bill, and governments can do things that individuals and single insurance companies cannot because of their sheer economy of scale.

The sustainability arguments are huge behind this particular legislation. It speaks to the issues that virtually every elected official in this country wraps themselves in, which is that they're for universal access to health care, that we must protect and sustain public health care. This is a way to do it. You have to control the costs.

But it's true that it's not just about spending, which is what we always focus on when we talk about the unsustainability of health care. The revenue side is also incredibly important. For example, between 1997 and 2004 federal and provincial governments together reinfused health care with \$108 billion in new spending. That's true. They also took out \$250 billion worth of tax cuts in the same time period. You can't say you've got a sustainability problem if you're not willing to hang on to the revenues that you already have.

You can't hang on to the principle of access for all citizens without admitting that we're going to have to pay more over time. So these measures are incredibly timely, but that doesn't mean necessarily that our drug costs are going to drop, and I'll explain to you why very briefly: because the majority of the market that you spend on in the ODB is for those people who are 65 years of age plus, not under 65 and not the Trillium drug plan. This is going

to be a growing part of the population, and they are being aggressively marketed.

That leads me to my second point: Why do you have to do this now? As of December 2005, CanWest filed a court case with the Superior Court of Justice in Ontario to declare that DTCA, the legislation governing a ban on advertising for drugs, violated a charter privilege, I think under section 2. There's no date yet determined for when it will be heard, but this fight is on the agenda partly because the federal government is reviewing its Food and Drugs Act.

When you open up the legislation that asks, "Can we advertise directly to consumers?" you get a whole new demand-side push. You've been hearing all the reasons why we can't deal with this on the supply side of it. We're about to enter a whole new era about where that demand is going to come from, and they are marketing 65-plus—they're marketing 45 to 65. Now it's not going to just be drugs to treat you, it's going to be drugs that make sure you don't get sick in the first place. If you want to hang on to the controllability of these costs, you must act as soon as possible, and that does speak a little bit to who the councils are that talk about this.

On the supplier side, much more aggressive marketing is on the horizon. IMS documents show that 2005 was globally a slow year in growth. Why? Generics were on the rise, and every single government is looking to do cost-containment exercises as you are doing at this jurisdictional level. They believe that they have an opportunity here to market in a brand new way. If you look at their websites, it's actually quite astonishing. The period between 2000 and 2003 saw spending on simple promotion in only the US rise from \$15 billion on promotions of drugs to \$31 billion in 2003. That's the last year. That's double in three years.

Be prepared. If DTCA blows down those walls on who gets targeted by marketing—like when you put aside \$158 million in your last budget for cancer drugs, be prepared to see more and more demand on the part of the consumer, saying, "I want access to this latest shiny thing." So we've got a real issue on how we are going to control the growth in drugs as not just treatment but management and prevention therapy.

The last issue I want to raise with you—because I do want to have time for an exchange—is that this model of governance talks about what governments can do for people, that taxes are not just a black hole but actually a way of harnessing collective purchasing power in a way that no individual, no business and no insurance company can do.

This is something that we should actually all be moving towards, with economies of scale, setting rules in a way that private sector players can't and making sure that the benefits of these changes are distributed for all citizens, not just some subset of citizens.

Now, we've been talking about uploading pharma since 2004. At the Niagara-on-the-Lake first ministers' meeting at the end of July 2004, the issue came up. It was raised by BC. It was also supported by Ontario. This

document was written for the Canadian Federation of Nurses Unions. I'll leave it with the clerk. It talks about the need for pharmacare. This document came out a couple of months later with Canadian Healthcare Manager. I'll leave it with the clerk if you wish to view it.

The issue of uploading the costs of health care to the federal level is important for two reasons: First of all, if we've got economies of scale at the provincial level, we've got even more economies of scale at the federal level, and that could actually save taxpayers money across this country and buy greater equity across this country. You could be the role models on how to achieve that at the national level.

Secondly, we've been talking about fiscal imbalance till the cows come home, and we have a Premier of this province who has been using this as their calling card. The fiscal imbalance story will be determined fairly forthrightly in 2006 in the fall when the federal government makes some proposals on how to realign those fiscal responsibilities between the federal level of government and provincial. We can expect that a good deal of that reallocation will be through tax room.

Every one of you at this table knows that there's huge tax competition in this country, and so even if you liberate tax room to the provinces, the ability to raise revenues to meet people's service needs is severely cramped by the desire on the part of governments to not look like they're tax-raisers. This is a proposal that can use some of that fiscal surplus at the federal level to actually deliver the goods for citizens across this country without paying another penny of taxes. In fact, it is a way of making that fiscal imbalance less unbalanced by actually using the surplus resources we have paid to buy us better value for money. So I hope that you will work with citizens to improve access to pharmacare in this country and go with your Bill 102.

The Vice-Chair: Thank you very much for your presentation. There is no time left.

1140

STEELWORKERS ORGANIZATION OF ACTIVE RETIREES

The Vice-Chair: I believe the Steelworkers Organization of Active Retirees is with us here today. If you are ready, you can come forward. You know the procedure: You have 10 minutes. When you are ready, you can start, sir. Before you start, if you could state your name.

Mr. Dan McNeil: Dan McNeil. I guess I'm going to start.

I want to thank the committee that we're able to be here today on such an important issue. Perhaps what we're saying has been said a lot, and I ask you to have patience with us if we are repeating anything.

Health Minister George Smitherman announced a package of reforms to curb rising health care costs. We applaud Mr. Smitherman's decision to use the government's considerable power to win more reasonable prices from pharmaceutical suppliers. Mr. Smitherman would

give pharmacists more authority to replace expensive brand name drugs with cheaper generic equivalents. He wants to regulate the prices of these generics to ensure the public is paying a more reasonable amount than the cost of their brand name equivalents. We feel this is also a wise decision. Mr. Smitherman's reforms would also save money for private workplace drug plans. We applaud that.

According to the Toronto Star, the generic industry employed 7,500 people in 2005 and spent \$300 million on research. Some \$1.58 billion worth of generics were bought by hospitals and drugstores, and retail pharmacies in Ontario filled 56.8 million generic prescriptions.

In comparison, brand name drugs employed 9,000 people and spent only \$360 million on research and development—sad. Hospitals and drugstores bought \$5.66 billion of brand name drugs, and retail pharmacies filled 70.5 million brand name prescriptions—clearly not a very level playing field.

According to the generic lobby, the majority of brand name drugs consumed by Ontarians are shipped into Canada, while the majority of generic drugs are made right here in the greater Toronto area. Therefore, a dollar spent on a generic drug in Ontario supports more jobs in Ontario, more research and development, and more pharmaceutical manufacturing capacity.

My friend will take over here.

Mr. Henry Hynd: My name is Henry Hynd.

However, we do know that a few generic drugs do not perform as well as brand name. While this problem is unusual, it is real. My wife, Margaret, has an irregular heartbeat, which was controlled by a brand name drug. When she reached age 65, it was automatically transferred over to a generic drug. My wife had serious difficulties. I had to contact her physician, who indicated clearly that there should be no substitutes. So I don't think that we can just switch people over, because humans are different, and a generic drug that may work for the vast majority of people may not work for everybody. There has to be a recognition of that, and this piece of legislation must enshrine that.

We must support a physician's direction when a patient experiences an adverse reaction to a generic replacement. We caution the ability of the pharmacist to change from a brand name drug to a generic drug. This should only happen in conjunction with the patient's physician.

Last year, the government spent \$3.4 billion on the government's drug plan. We believe the government has considerable buying power and must be the most important customer to brand name and generic companies. An inquiry into the development cost and production of brand name drugs would be an essential ingredient in lowering the cost of brand name drugs. This inquiry would provide us with vital information and allow the government to investigate the cost of production of generic drugs at a reasonable and rational cost.

Since we only have a short time left, we wish to speak about the new executive officer or officers who will

administer the Ontario drug program. This position should keep, maintain and publish the formulary. We understand this is currently a mainstream power that will be transferred to the new executive officer. While we could speak to the other duties that are transferred to this new executive officer, we would like to move through to our concerns about this delegation of responsibilities that are the new duties of an elected officer, which in many ways are removed from government control.

We believe that the government of the day wishes to accomplish a savings or reduced cost of both generic and brand name drugs. The most influential body to accomplish this is the government itself. We applaud the ideals of the new legislation but have serious concerns regarding the points we have raised. We hope these concerns will be implemented.

Don't give up your power in government to those outside of elected officials. We have in the recent past witnessed how many things can go wrong when those who are elected hand over power to officials outside of government. Considerable savings, we believe, will be better achieved directly through government. More importantly, the health of the people in Ontario will be better protected by provincial politicians.

Thank you for the opportunity to appear before the committee and for hearing and supporting our concerns.

Submitted on behalf of the Steelworkers Organization of Active Retirees.

The Vice-Chair: Thank you for your presentation. We can start with Ms. Wynne. We have three minutes. We can divide them equally.

Ms. Wynne: Thank you very much, gentlemen, for being here. A couple of things. I certainly support your concern about doctors being able to indicate no substitutions. That is the situation, if this bill is passed: Doctors will be able to indicate no substitutions.

I wanted to talk about the executive officer position for just a minute, because you're concerned about the powers being transferred. The executive officer model is essentially the same as the current model for the general manager of OHIP, who of course has a much broader mandate. But the executive officer will report directly to the Deputy Minister of Health and Long-Term Care. Do you see that as adequate control? Our feeling is that that model will work for the executive officer, as it does for the general manager.

Mr. Hynd: We believe that won't work. The greatest concern—and seniors are the ones, as we grow older, who need it more than anybody. By the numbers, I should say; not more than anybody.

We think that it's much better for government to be accountable to the citizens than to have one individual who has all this power to work with companies. I know if I was representing government—I used to do a bit of negotiation in my day. I know that if I had the support of the government behind me, negotiating with the brand name companies and the generic companies, I'd be able to do a very good job. However, there might be a huge

temptation, because I'm the only person—it would be different than now. That's what concerns me.

1150

Mr. Cameron Jackson (Burlington): Thank you for your presentation. Your retiree group would have bargained your benefits upon retirement, so you do have a drug plan currently.

Mr. McNeil: Some; some don't.

Mr. Jackson: Some do and some don't.

Mr. McNeil: Not all of us. Not everybody.

Mr. Jackson: Very good. And—

Mr. McNeil: For some people who have it, it's very low, too, very low coverage, unfortunately.

Mr. Jackson: Okay. Your personal experience with—I get your point about having an elected individual being held accountable, especially in Ontario, where you have two or three political parties to advocate for you at any one time. Have you found any other examples across Canada where there's this large disconnect between the elected people and the drug plan?

Mr. Hynd: I can tell you from my own life experience working in the union that I know I could never get from my membership, on a vote of the membership, control of how we would negotiate a collective agreement, for example, how we would work out wages and benefits, and I think that's worked best for our union. What happens in that process is, the members are involved in the negotiations from that facility, and when we report back, we report back to the people who work in that facility. They determine whether it's a good agreement or not.

For me, there's a real concern about somebody having the ability to work with a pharmaceutical, brand name and generic, to try to work out some price—

Mr. Jackson: Without you ever knowing about it.

Mr. Hynd: That's our biggest concern.

The Chair: Ms. Martel.

Ms. Martel: Thank you for being here. I want to focus on the same issue.

I know the government says that the model for the executive officer is a model taken from the manager of OHIP. As far as I know, the manager of OHIP is still a government bureaucrat; it is not a political appointee. Secondly, even the manager of OHIP doesn't have the ability to list or delist items from the OHIP schedule. That still has to go through cabinet, so that government officials, at the end of the day, are accountable. Not only is there a problem that this person is appointed, the executive officer, but many of the checks and balances around things being done by regulation, so cabinet has to approve it ultimately, are also taken out of the bill.

I appreciate you focusing on this particular concern, because there are very significant differences between what is being proposed here and what is currently in place at OHIP. I would submit to you that the bureaucrats who are running things at OHIP do not have any significant similar powers in the same way the government is proposing this. There are checks and balances: that things have to go through regulation, have to be done by the Lieutenant Governor, which still takes these import-

ant decisions back to cabinet to approve in the first place. That's not happening with the executive officer.

The Vice-Chair: Thank you very much for your presentation. Your time has expired.

CANADIAN ASSOCIATION OF CHAIN DRUG STORES

The Vice-Chair: I now call on the Canadian Association of Chain Drug Stores, if they are with us here. You can start when you are ready. Before you start, please state your name.

Ms. Virginia Cirocco: Good morning. My name is Virginia Cirocco. I am a licensed pharmacist in Ontario and senior vice-president of pharmacy for Shoppers Drug Mart. I am appearing before the committee this morning in my capacity as chair of the board of the Canadian Association of Chain Drug Stores, or CACDS. I'm joined by Andy Giancamilli, who is the chief executive officer of Katz Group Canada and vice-chair of CACDS.

I thank you for the opportunity to bring a perspective from Canada's chain drugstore industry, which operates more than 5,600 pharmacies across the country, and 80% of the drugstores in Ontario.

My remarks today will focus on three areas: first, the likely impact of Bill 102 and its related policy statements; second, changes to the legislation that chain pharmacy proposes in order to minimize the negative impact; and third, the need to engage pharmacy in a productive way as the reforms to Ontario's drug system are further developed.

I'd like to start by saying that CACDS members welcome reform to Ontario's drug system. In fact, we believe that changes are needed. CACDS participated extensively in the review of the drug system and offered very detailed, practical, and what we believed to be effective proposals for the government to consider.

We were hoping and expecting that the legislation's provisions would address the problems based on the reality of the current system, and we anticipated that the reforms would represent a significant step forward for the pharmacy profession in Canada, and ultimately for patient care.

In many ways, some of the proposals put forward by the government do have merit, and CACDS supports them: for instance, the government's intent to move toward a more transparent, accountable and accessible drug system in Ontario.

Two of the announced policies in particular are welcomed by community pharmacy. They are excellent, forward-looking and long-sought initiatives, and properly recognize the unique front-line role of pharmacists in the health care system today. One is to move to compensate pharmacists for clinical services. It will, for the first time, recognize the expertise pharmacists bring to services that extend well beyond dispensing. The other is the policy to establish a Pharmacy Council. This council will ensure that the knowledge and skills of the pharmacy industry are involved in the development of future pharmaceutical

and health policy. In fact, it is so important that it must be included in the legislation and thereby enshrined in law.

In spite of these praiseworthy initiatives, however, CACDS is disappointed that very little of what we offered as solutions is reflected in the new bill and the policies. We're concerned that the overall effect of Bill 102 and the associated drug system policy announcements will be harmful both to the practice and to the business of pharmacy, and to patient care not only in Ontario but across the country.

If there is a belief that the Ontario government's current plans to reform the province's drug system will not affect chain pharmacy, that is inaccurate. CACDS agrees with the estimate of the Ontario Chain Drug Association—the OCDA—that the reforms would reduce overall pharmacy funding to the point that it would render current levels of pharmacy service and care in Ontario unsustainable. The chain drug industry's unique programs and services would be in jeopardy. There is the real potential for staff layoffs, reduced hours of operation, increased patient wait times in pharmacies and significantly reduced investment in patient education programs.

The concern about the likely impact on this province is considerable enough, but more alarming is that it will have a ripple effect on pharmacy economics right across this country. As a national association with members who operate in every province, we are very concerned that the policies as announced by the Ontario government will be adopted not only by public drug plans in other jurisdictions but also by private drug plans. We do not believe this was the intent. The negative consequences and the \$500 million of lost income already discussed before you would in fact be dwarfed if this were allowed to happen.

We would like to emphasize that the government should consider other, more productive opportunities to further enhance the system, rather than just attempting to extract cost-savings from pharmacy. Overall, the government's proposals highlight a missed opportunity for Ontario to take a leadership role in leveraging pharmacists' ability to enhance pharmaceutical care and manage costs.

Pharmacy is not a leading cost-driver. According to the government's figures, in the last 10 years, prescription drug costs have increased by nearly 150%. By comparison, since 1993, pharmacist dispensing fees have increased by only 2%, and inventory allowances have remained at the static percentage of the cost of acquiring and stocking drugs.

Pharmacists are uniquely qualified to drive innovation, improve health outcomes and help better manage health costs. Given this fact, it is imperative that pharmacists—health professionals expert in pharmaceuticals—play a larger, more central role.

Specifically, pharmacists should play a leading role in first ensuring that prescription medicines are used properly and safely, avoiding adverse events, and enhancing patient adherence to treatment protocols; second, manag-

ing rising drug costs resulting from increased utilization, multiple-medication regimens and the more frequent use of newer, more expensive therapies.

The CACDS submission, which I have circulated to the committee, includes several specific recommended amendments to Bill 102, as well as recommended pharmacy policy solutions designed to improve patient care and control total health care costs. We believe that in order to avert serious negative consequences to the profession and the business of pharmacy, as well as to patients, the government must amend Bill 102 and reconsider certain announced policies associated with the drug system reform plan.

We support the advocacy initiatives and the role of the Ontario Pharmacists' Association as we continue to work collaboratively with them. Our submission endorses the analysis and echoes the recommended amendments put forward last week by the Ontario Chain Drug Association: (1) the recommendation to consider the inclusion of the definition of "professional allowances" in Bill 102 to preserve the economic viability of pharmacy. We completely support the removal of unacceptable practices associated with manufacturer rebates. We ask, though, that the commonly accepted practice of negotiated support that exists between pharmacy retailer and manufacturer be allowed since it is such a critical source of funding. Recommended definitions and limitations around allowances are included as well in our submission; (2) enshrining in law that a Pharmacy Council be established and that chain pharmacy have official representation on that council; (3) formalizing the process to review and enhance the economic model for community pharmacy; and (4) amending other specific policies that have been announced that would also be detrimental to the economic viability of pharmacy.

Finally, we want to strongly urge the government to agree that community pharmacy must be engaged in the further development of policy regarding the drug system, especially given the fast-paced legislative process for Bill 102. CACDS encourages the Ontario government to consult with us as the regulations for Bill 102 are developed. We are the experts on the Ontario drug benefit program and experts on the dynamics of our industry.

There are many successful examples from other jurisdictions that the government can take from. Governments in provinces across Canada and other countries have worked in collaboration with pharmacy to create novel programs that improve patient health and provide cost management. Our submission outlines a number of these success stories.

Our position is that government must consider partnering with us on initiatives to improve the drug system. We have been and will continue to be open, eager and enthusiastic about the prospect of the needed system reform.

The Vice-Chair: Thank you very much for your presentation. We have one minute left. I'm going to give it to Dr. Kuldip Kular.

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale): First of all, thank you very much for your presentation. The question I have is, how would you define "professional allowances" if I asked you?

Ms. Cirocco: As in the definition that we proposed in the amendment, it would be investments that would be made with pharmacy providers to support patient education programs, patient service programs, things that are focused directly at patient care—the clinical services that exist today, focused on care.

The Vice-Chair: Thank you very much for your presentation.

Ladies and gentlemen, thank you very much for your attendance and co-operation. I believe the time for the morning session has expired. We're going to recess until 3:30 sharp, or after question period if question period passes 3:30. Thank you again.

The committee recessed from 1202 to 1535.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I'd like to call the committee back to order. As you know, we're here to deliberate Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act.

CARP

The Chair: We'll proceed immediately to our first presenter. I'll call, on behalf of the committee, Mr. Bill Gleberzon, director, and Judy Cutler, also director, of the Canadian Association of Retired Persons, CARP/50Plus. I would invite you to please come forward. As you've likely seen the protocol from previous testimony, you have 10 minutes in which to make your combined presentation, beginning now.

Mr. Bill Gleberzon: Thank you very much. I'll be doing this by myself. Ms. Cutler is not with me today.

CARP's primary message in regard to Bill 102 is, slow down the process. The impact of the bill is too wide and deep to be rushed through without a thorough examination and consultation, because the devil is always in the details. But if the government is insistent on fast-tracking the bill, then CARP recommends the adoption of the recommendations presented in this brief.

Although there are some aspects of the bill which CARP endorses, there are elements that have generated concern and, therefore, require reconsideration or clarification.

CARP supports the provisions in the bill that expand the input by patients, including the Citizens' Council to advise the new executive officer. Citizen participation in the Committee to Evaluate Drugs is also welcomed by CARP. CARP is pleased that the co-payments and deductibles for the dispensing of prescription drugs paid for by seniors has not changed.

The elimination of limited use and section 8 categories is welcomed by CARP, provided that the new conditional listing category and exceptional access mechanism speed up access and ensure affordability.

Increased information and advice for patients on the appropriate use of medications by pharmacists is a good move, and will increase their role as front-line health care providers without diminishing the doctor's role as the final decision-maker for patients.

CARP understands that the ministry is proposing to amend the bill to remove the \$25 cap on rebates, which will enable pharmacies to continue to provide the range of drugs required by patients. CARP is also pleased to hear that the ministry is proposing to amend the bill to ensure a re-review process when the executive officer has rejected the listing of a drug. Having said that, we have a number of concerns which I'd like to turn to now.

The bill focuses on cost containment, but this should not be accomplished by jeopardizing the optimal prevention and care for patients. The legislation should clearly prohibit any type of cost containment using reference-based pricing, maximum allowable cost or therapeutic substitution.

There are clear threats in the bill, in our point of view, to implement a system of therapeutic substitution by having pharmacists substitute not just "the same" drugs but "similar" drugs that are prescribed by their doctors. This is unacceptable to the principle of ensuring that patients receive the drug their doctor knows is best for them. However, we understand that the ministry is prepared to amend the legislation with regard to limiting the term "similar," for the purpose of interchangeability, to non-active binding agents—that is, excluding chemical ingredients—and to removing the clause that increases the power of the pharmacist to substitute the drugs prescribed by doctors for their patients.

The proposed changes to the interchangeability rule open the door to reference-based pricing and similar policies that have bureaucrats deciding what's best for patients. No patient should have any reduced coverage for any medication, nor should they have the medication they currently rely on switched due to Bill 102.

1540

Interchangeability of brand and generic drugs is not a decision to be made by pharmacists or bureaucrats, but only by doctors. CARP continues to receive complaints from its members that generic drugs are neither always less expensive nor always as effective as brand drugs. In fact, patients who have been switched to the generic "equivalent" of a brand drug often need to get more refills because of the lack of effectiveness. This actually increases the cost to either the patient or to the government.

The bill should establish a specific and reasonable length of time for Ontario to review a new medication after it is adopted by Health Canada. We recommend the Quebec model, which ensures that all new drugs are reviewed within six months after they are approved by Health Canada.

The bill's promise of faster access applies only to breakthrough drugs, but the term "breakthrough" is not defined and could drastically limit the number of new drugs that get reimbursed.

Any drug that works for patients to prevent or treat illness is a breakthrough for those patients and should be made available to them. Apparently, small differences between drugs can make crucial differences to patients, which is why physicians must have the final say about as broad a range of therapies as are deemed safe by Health Canada. Accordingly, the term "breakthrough" must be clearly defined.

CARP is concerned that the executive officer who will manage Ontario's drug system will be a bureaucrat appointed by, and accountable only to, the Minister of Health and Long-Term Care. CARP believes that this should be an arm's-length position that is directly accountable to the public and a panel of independent experts.

Although, as previously noted, CARP supports the establishment of a citizens' committee to advise the executive officer, we are concerned that this committee will be strictly advisory and that its recommendations need not be heeded by the executive officer. Therefore, CARP recommends this committee and the executive officer work together in partnership. Otherwise, the committee is just window dressing.

The government must adopt, as a basic principle in its negotiations with pharmaceutical companies and pharmacies, that patients' access to prescription drugs must not in any way be jeopardized, reduced or limited as a result of negotiations.

The policies outlined in the bill could severely limit access to drugs and pharmacies by Ontarians, especially those who live in small towns and rural communities serviced by a single pharmacy. These pharmacies could be forced to close their doors because their income will be greatly reduced.

It is estimated, we understand, that as many as 300 pharmacies could be closed as a result of the changes in income structure—that is, the rebates—caused by the bill. Those who do survive could end up reducing the range of drugs they carry, forcing patients to wait for special orders. Even large pharmacy chains could be negatively impacted.

There is a fear that more restrictions on, and not enough incentives for, the pharmaceutical industry and their research—including funding—may hamper the development of this industry in the province and that many jobs will also be lost. Rather, Ontario should follow the example of Quebec and other provinces, like Manitoba, that encourage this industry.

The bill should include the establishment of drug management programs and enhance other aspects of preventive care that will make taking drugs even more effective, such as nutrition counselling, exercise programs and timely access to tests to monitor progress. Patients need more information to make them more involved players in their own health care.

Doctors' having the final say in prescribing drugs, better compliance by patients in taking their prescription drugs, and greater support services such as just listed above will ensure better all-round health and improved

cost-effectiveness for the province's investment in prescription drugs.

The bill must recognize and support the core role played by drugs in Ontario's home care system which, in turn, frees up hospital beds. In this way, waiting lists as well as general health care costs will be reduced. At the same time, recovering patients can be made more comfortable within familiar surroundings. However, if the availability of drugs is in any way limited, the effectiveness of the home care program will be severely reduced with a corresponding lengthening of hospital stays and increased returns.

In summary, we recommend the following changes:

- the clear prohibition of any type of containment using reference-based pricing, maximum allowable costs or therapeutic substitution;

- the establishment of a specific and reasonable time on the length it will take Ontario to review a new medication after it is approved by Health Canada;

- a clear definition of the term “breakthrough” drug;

- the adoption as a basic principle in negotiations between government and pharmaceutical companies and pharmacies that patients' access to prescription drugs must not in any way be jeopardized, reduced or limited;

- the Citizens' Advisory Committee and the executive officer should work in partnership;

- the establishment of drug management programs and enhancement of other aspects of preventive care that will make taking drugs even more effective, such as nutrition counselling, exercise programs and timely access to tests to monitor progress; and finally,

- recognition and support for the core role played by drugs in Ontario's home care system, which in turn frees up hospital beds and the concomitant reduction of waiting lists as well as general health care costs.

The Chair: Thank you, Mr. Gleberzon. We really have just a handful of seconds per side. We'll begin with Mrs. Witmer, please.

Mrs. Witmer: Thank you very much for the excellent presentation. What can I say, other than that we certainly will be prepared to support your recommendations? They're excellent. I think you've pointed out all of the shortcomings of the bill and I compliment you on that.

Ms. Martel: Thank you for being here today. On page 2, you “understand that the ministry is prepared to amend the ... term ‘similar.’” Can you tell us what you know with respect to that change?

Mr. Gleberzon: That's exactly what we know; that's the extent of it.

Ms. Martel: So you're in the same boat we are.

Mr. Peterson: Thank you very much for being here. Obviously you have a big concern about the interchangeability. Could you give us a little more information on that and your view of the definitions that we've got, that we're looking at.

Mr. Gleberzon: As I said, we understand that the government is taking a very serious view of these issues. I've heard similar concerns from other groups. We're

concerned that—and we get a lot of feedback from our members, who tell us that when they are—

The Chair: Mr. Gleberzon, I will have to intervene, with apologies. Please feel free to communicate that information to us in writing, or even personally after the committee deliberates today. I'd like to thank you on behalf of the committee for your presence, deputation and written submission on behalf of CARP/50Plus.

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair: On behalf of the committee, I now invite our next presenter, Doris Grinspun, executive director of the RNAO, the Registered Nurses' Association of Ontario. Ms. Grinspun, I invite you and your colleague—as you've seen the protocol, you have 10 minutes in which to make your presentation. I'd also ask that you just identify yourselves, for the purposes of the permanent record, for Hansard recording. Your time begins now.

Ms. Doris Grinspun: Thank you very much. Good afternoon. My name is Doris Grinspun and I'm the executive director of the Registered Nurses' Association of Ontario. With me today is my colleague Sheila Block, director of health and nursing policy in our association. I would like to thank the committee for the opportunity to comment on this very important piece of legislation.

RNAO's mandate is to advocate for healthy public policy and for the role of nursing in shaping and delivering health services. For us nurses, health care is a human right. And it is in this context that I am making my remarks today.

Nurses know that prescription drugs when used appropriately are essential in sustaining life and in improving the health of people in Ontario. However, nurses have been concerned for some time about the skyrocketing cost of drugs and the effect this expenditure has on the sustainability of our health care system and the impact it has on access to drugs. Over the past 10 years, costs have soared by almost 170%. This growth in drug expenditures has outstripped that of other expenditures in the overall health care budget. If current trends continue, drug costs are certain to keep climbing.

We agree with Minister Smitherman's comment earlier this year that “our drug system has been failing us.” That is why we welcome this legislation. The proposals in Bill 102 address many of the shortfalls in our current drug system: the growth in expenditures I just described; high prices of essential drugs; a lack of transparency across the system; and that we don't do enough to ensure that drugs are prescribed in a safe, effective and cost-efficient manner.

1550

RNAO supports the proposed legislation because it will make good progress on these crucial issues for the health care system, but we also have some suggestions on how to strengthen them.

Governance: In the area of governance, RNAO supports the creation of an executive officer because this

office has the potential to increase the efficiency and effectiveness of our provincial drug system. We caution that Ministers of Health should not try to off-load political responsibility for drug programs onto this office.

Transparency: We also welcome the effort to increase transparency, responsiveness and accountability of the drug system. To this end, we agree with the plan to appoint patient representatives to a Committee to Evaluate Drugs and the creation of a Citizens' Council to help guide public policy. However, we urge the government to set up a transparent process so that appointments to these two bodies and the executive officer are at arm's length from the government and industry. We also recommend regular reporting to ensure accountability. These measures should be enshrined in regulation.

Access: With respect to the measures to improve access, our support is qualified. We know that streamlining approvals for some drugs can save precious time and increase access. However, we caution that the safety of the drug system must not be compromised by making testing less rigorous, and in the interest of transparency and accountability, the public should have access to all information about drug approvals.

Use of generic drugs: RNAO supports greater flexibility to allow pharmacists to dispense a generic drug in place of a brand name drug. However, we recommend that the government continue to fully reimburse "no substitution" prescriptions for people who experience adverse reactions to substitutes.

Pricing of drugs: RNAO supports the proposed measures to control drug prices, and urges the government to strengthen the capacity of the executive officer to control costs by giving this office the power to negotiate a price change for drugs after they are on the formulary, as well as when they are being placed on the formulary.

Appropriate use of drugs: We support the measures to ensure appropriate use of drugs. However, RNAO urges the government to invest a sufficient amount of resources for the best guidelines and innovation research fund to support these efforts.

In conclusion, we believe this legislation represents a balanced attempt to streamline a complex and expensive drug system, making it more effective and more sustainable. It levels the playing field and will support the sustainability of our medicare system. However, one thing is important to remember: Bill 102 does not address a fundamental issue with respect to drug policies. Many Ontarians do not have access to drug benefit plans. Inadequate access to essential medications based on the ability to pay is both unfair and compromises health. For that reason, we continue and will continue to call for a pharmacare program that covers all Ontarians.

I thank you for the opportunity to speak to you today and express my hope that you will consider the recommendations made by nurses today.

The Chair: Thank you, Ms. Grinspun. We'll have about 90 seconds each, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you, Doris and Sheila, for being here today. I want to focus on your concern that no attempt should be made to transfer political accountability for the drug programs from the minister. Yet, I look in the bill, and subsections 14(1) and (2) transfer responsibility from the minister to the EA. Subsections 15(1) and (2) and subsections 16(1), (2), (3), (4) and (5) transfer that responsibility. Subsections 17(1), (2) and (3) all transfer responsibilities from the minister to the executive officer. Some of these are quite fundamental: the designation of drugs to the formulary; the negotiation of agreements with manufacturers of drug products that used to be done by regulation by the minister, LG, are now going to be done by the executive director. There are any number of provisions in here where that happens. I remain very concerned that that's exactly what's going to happen under this bill. If you want to comment, that would be great.

Ms. Grinspun: What we attempted to suggest here is that the office is very important though at the same time we do not want to see any minister off-load the political responsibility and decisions on the program. It will be important and we will keep a close eye that that be the case.

Ms. Wynne: Doris, thanks very much for being here. On the issue of the model that we're using in terms of the executive officer, the model is analogous to the general manager of OHIP and reports to the deputy minister. As far as we're concerned, that sets up a situation where there will be accountability and there will be enough control over the office. Is that your feeling about the way it has been set up?

Ms. Grinspun: It is our hope that that's the way it will function. It is being set up in that way. But the reason why we say it's our hope is that we caution the Minister of Health not to try to off-load the political responsibility; so at the same time that we want the executive officer to have significant powers, we also need to watch that we don't wash our hands from—

Ms. Wynne: So it's a balance, and that's what we're trying to strike.

Ms. Grinspun: Absolutely.

Ms. Wynne: Thank you.

Mrs. Witmer: Thank you very much, Doris, for your presentation. It's thorough, as always, and you've covered lots of points.

I just want to take a look at the use of generic drugs. Obviously, you support the expanded scope for interchangeability. Then you "recommend that the government continue to fully reimburse 'no substitution' prescriptions for" clients with "adverse reactions to substitutes." So what would you see the process being? Would you see a patient going through and trying all of the generics and having adverse reactions and then being put back on the brand? What would be the process?

Ms. Grinspun: The process will be that the patient will work closely with both his health care provider—that being a physician or a nurse practitioner; both prescribe drugs—and with the pharmacist. In most cases,

there are actually no side effects to most drugs and we know that from utilization. We are saying that in the event a patient experiences an adverse effect and knows it, that patient shouldn't go through 20 different drugs; that patient should be exempted and the drug should be covered. But if you look at the research, the great majority of situations is that, first of all, there are no side effects, and also the impact, which is equally important, is negligent.

The Chair: Thank you, Mrs. Witmer, and thank you to you as well, Ms. Grinspun, and to your colleague for your deputation presence and written submission on behalf of the RNAO.

I would, incidentally, just before we call the next presenter, notify all members of the committee that 12 noon tomorrow is the deadline for written submissions for amendments. As well, there will be a vote in Parliament tonight at approximately 5:50, and we're just deciding what the committee will need to do in terms of protocol for that.

CANADA'S RESEARCH-BASED PHARMACEUTICAL COMPANIES

The Chair: Having said that, I will now invite our next presenter to the podium, and that is Mr. Russell Williams, the president of Canada's Research-Based Pharmaceutical Companies. The written submission has already been distributed. As you've seen in the protocol, Mr. Williams, you have 10 minutes in which to make your combined presentation, beginning now.

Mr. Russell Williams: Thank you very much. It is indeed a pleasure to be here today along with Walter Robinson, the vice-president of provincial affairs of the Rx&D. I'm pleased to present on behalf of Rx&D today.

Let me begin by saying that decisions concerning Bill 102 could affect the quality of life, the economic prospects and the health outcomes of millions of people in the province for years to come. Rx&D member companies believe strongly that Ontario's decision makers should reassess the possible short-term savings with the risk of compromising much greater long-term benefits.

But before I go into it, let me describe briefly who we are. In Ontario, the research-based pharmaceutical community employs 9,000 people in high-paying, knowledge-based jobs and generates about 25,000 jobs in other industries. Each year, companies inject over \$2 billion into Ontario's economy.

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Something people don't know very much about is that there are 40,000 Ontarians who are on clinical trials—40,000 people who are benefiting from innovative drugs quicker than they normally would have. This is phenomenal; a huge impact for the patients, for the health care system—because it's relatively no cost—and for the medical profession, giving them a choice of new alternative medicines.

We collectively invest more than \$360 million in research and development in this province, with \$50 million going directly to universities and hospitals.

Notwithstanding other claims, ours is the only pharmaceutical industry that does research into new medicines and vaccines to bring new treatments and new hope to patients.

Our members adhere to a rigid, transparent and mandatory code of conduct in our relationships with health care professionals. That's something we've worked on and that I'm very proud of and it's important to mention to the members of the committee.

Let me discuss the value of medicines. New medicines and vaccines save lives, relieve pain, cure and prevent disease. They frequently help to avoid the need for invasive procedures and hospital stays and lessen the impact of chronic conditions. Here are a few statistics:

Over the past two decades, death rates in Canada from bronchitis, asthma, emphysema, AIDS, heart attacks, heart disease and chronic liver disease have all fallen dramatically.

Pharmaceuticals in some way have helped to, in the same period, reduce hospitalizations; for instance, 60% for ulcers and AIDS; 40% for diabetes, respiratory disease and chronic liver disease.

And in the same 20 years, life expectancy has increased by four years in Ontario alone. When you think about that in terms of the phenomenal impact on Ontario, I think we should all be impressed.

Patented prescription medicines represent less than 8% of every dollar invested in the health care system. Yes, this proportion has been rising, but that is given to the very important role that we are helping Ontarians live longer, healthier lives. This money is well spent—and I know that this is very important to all of you as legislators—because it has been proven that every dollar invested in newer medicines actually can help save up to \$7 elsewhere in the system.

In Bill 102 there are some positive aspects, and we have been supportive of the need to improve the drug system in Ontario. We have on numerous occasions offered our best ideas and our best suggestions of how to improve the sustainability of our health care system. Let me highlight a couple of the points that are positive in 102:

- more patient involvement. As an ex-legislator myself, I've always been very, very supportive of better-informed patients making better decisions;

- an enhanced role for clinical pharmacy and patient counselling;

- the potential for faster listings for innovative medicines. We still have questions as to how that would happen, but the potential is quite encouraging; and

- reduced paperwork for physicians and pharmacists.

However, we are profoundly concerned about the impact that Bill 102 will have on the quality of patient care and innovation. Let me tell you Ontario's track record. In the last two years, Ontario listed only 15% of

new medicines approved by Health Canada and launched in this country—only 15%.

The legislation should ensure that the value of incremental innovation is recognized for the ability to better treat disease and advance patient care. All incremental research should be recognized, and all research is based on the research of somebody else.

In addition, we have grave concerns about Bill 102 in the following areas:

It opens the door to therapeutic substitution through an expanded definition of “interchangeability”—“same” vs. “similar”—and through the introduction of “competitive agreements” as modeled on the cost-containment framework at the Department of Veterans Affairs in the US. One size does not fit all in health care. This door should be closed.

We are not convinced that the introduction of off-formulary interchangeability (OFI) will actually save employers and patients money.

Bill 102 also reduces the ability of the innovative pharmaceutical industry to invest in research and development by introducing price rollbacks. Already, prices in Canada are controlled federally and are 9% below the international median. There basically has been stabilization of prices for the last 20 years.

The executive officer's extraordinary powers—we believe that although moving it away from cabinet decision is good, we must make sure that those powers are put in check and balance and that there's a proper appeal process.

Bill 102 is inconsistent with the Ontario government's strategy in fostering innovation, innovation in health sciences and creating jobs. The Premier, recently quoted in Chicago: “Places that invest in innovation will be home to the most rewarding jobs, the strongest economies and the best quality of life.” Competition for Rx&D investments is global and extremely fierce. Ontario competes with Europe, the US and emerging markets like China and India to attract those dollars. Presently, the province boasts the third-largest biomedical and technology cluster in North America. If Ontario is not seen as innovation-supportive, if our industry is negatively affected by \$500 million a year, how will the biopharmaceutical community grow? More likely, it will decline, patients would lose, research would lose and Ontario would lose.

Our solutions, as I run through this very quickly: If the bill could be amended, include four principles of partnership:

(1) Improved access to new medicines, respect for the doctor-patient relationships and a primary focus on approved outcomes for patients.

(2) Integration with the province's innovation agenda to create more jobs and a better quality of life. You know and I know that if you can organize two departments together, they are much stronger.

(3) An integrated approach to health care that looks beyond the silos, so it will understand the effect of pharmaceuticals on the rest of the system.

(4) It has to be consistent with the letter and spirit of Canadian laws, and that innovation is recognized and protected. If it's recognized, we'll be able to see great growth.

We hope that the government will go beyond the traditional supplier-customer relationship, that our products are not just commodities. Our industry can help build a stronger economy.

In closing, we urge the committee and the government to look at drug spending and its effect on the overall health budget, not just on silos, and look at innovation in health care and research as an investment for the future. We all know we need a health care system that is sustainable and predictable. We can help the government achieve this goal. But if innovation isn't rewarded in Ontario, innovation will go elsewhere and we will not help to achieve this goal. The committee has an opportunity to strengthen the bill so it better delivers outcome for patients and builds on Ontario's knowledge economy.

Ladies and gentlemen, thank you for the opportunity to quickly go through our concerns. I wish you well on the deliberation of this very complex and very important bill facing the people of Ontario.

The Chair: Thank you, Mr. Williams. You've left about 40 seconds for the government side.

Mr. Peterson: Thank you for your presentation. I come from Mississauga, commonly known as “Pill Hill,” and we appreciate the quality of jobs that you and your industry have brought in.

One point you make is that higher prices will spawn larger R&D, and that R&D I guess includes clinical trials as well as new product development, yet the generic industry has much lower prices and actually has a much higher percentage of R&D, and their business is actually developing. Can you explain this difference to us?

Mr. Williams: The R&D for new medicines is well over \$1 billion. Generics are in the business of copping our products, and there's a legitimate role for generics in the health care system, but the investment for research is over \$1 billion. Very few products actually make it to market. Seven out of 10 molecules actually don't make it to market. So the research—

The Chair: With apologies, I will have to intervene there and offer it to the PC side.

Mrs. Witmer: Thank you very much for your presentation, Mr. Williams. What was your reaction when you heard Mr. McGuinty quoted at the Bio 2006 conference in Chicago that “places that invest in innovation will be home to the most rewarding jobs,” and at the same time the minister had introduced a bill which seemed to be in contradiction?

Mr. Williams: Clearly, the bill and the innovation agenda are incompatible, they are inconsistent, and we have to make sure from the government's perspective that an agenda for health and an economic agenda are put together. Together, I think we actually can invest in health care, help the economy grow and help patients at the same time. Right now, as written, they are clearly and totally inconsistent.

Ms. Martel: Thank you for being here today. The legislation doesn't say anything about the innovation fund. What would be your recommendation in this regard?

Mr. Williams: I think the innovation fund has to be built in an overall agenda that is partly the fund, but also a number of government initiatives that are very complex so that it helps Ontario take on the rest of the world. It won't just be the fund, it will have to be a number of other issues, and we are very prepared to sit down and follow the committee's recommendation to try to map that out with the province.

The Chair: Thank you, on behalf of the committee, Mr. Williams, for your presence and deputation on behalf of Rx&D, Canada's Research-Based Pharmaceutical Companies.

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ONTARIO MEDICAL ASSOCIATION

The Chair: I would now invite to the podium our next presenters, representing the Ontario Medical Association: Dr. David Bach, the newly installed president of the Ontario Medical Association, as well as Barb LeBlanc and Rachel Roberto from OMA staff. Please identify yourselves for the purposes of Hansard recording. As you've seen the protocol, you have 10 minutes in which to make your address. Welcome and please begin.

Dr. David Bach: Thank you, Dr. Qaadri, ladies and gentlemen. I'm Dr. David Bach. I'm a radiologist in London, Ontario, and I'm the president of the Ontario Medical Association. With me are Barb LeBlanc and Rachel Roberto from OMA staff.

The OMA would like to commend the government on the introduction of the Transparent Drug System for Patients Act, Bill 102, and its effort to transform the province's publicly funded drug system. We believe that government's attempts to improve access and transparency within the system will have a positive impact on the profession and on our ability to care for our patients.

We are pleased to have the opportunity to comment upon those parts of the bill we believe will affect patient care. We will identify areas of interest or concern and will offer some specific recommendations for change, where possible.

The OMA believes that the creation of the position of the executive officer to manage the government-funded drug programs and the transfer of the functions and powers of the minister and Lieutenant Governor in Council to the executive officer to make formulary listing decisions are important developments. The current system, whereby products are listed on the formulary through cabinet decisions, is a long and arduous process which holds up needed approvals by months and denies patients necessary care. We expect that by devolving cabinet's authority to make listing decisions to the executive officer, approval times will be accelerated, patients will have greater access to necessary medications and they will be able to receive more timely care.

The OMA would like to briefly comment upon the proposed clause relating to the definition of interchangeability, such that products may be designated as interchangeable not only where they have the same active ingredients in the same dosage form, but also where they have "similar" active ingredients in a "similar" dosage form. As written, this would permit the executive officer to authorize "therapeutic substitution," so that a drug of the same or of a different class could be substituted for one that is prescribed. This has the potential to put patients at risk, and the OMA would speak strongly against such a move. We understand from ministry staff, however, that the change in the definition of interchangeability is not intended to permit therapeutic substitution and therefore we recommend that Bill 102 be amended to ensure that the new definition of interchangeability does not permit therapeutic substitution and that it accurately reflects the government's stated policy directions.

The OMA understands retroactivity—in section 25, clause 16(5)—to mean that the executive officer may authorize an "exceptional access" drug retroactively and may make coverage for the drug retroactive. If this assumption is correct, the OMA supports this amendment, since under the current section 8 process, patients must often wait weeks and even months until the required section 8 approval occurs and the patient who pays for the drug out of pocket during the period between prescription and approval is not reimbursed. If, however, our understanding of this clause is incorrect, we recommend an amendment to permit retroactive payment.

The OMA strongly supports the proposed attempts to bring better access and efficiencies to the system through the elimination of the "limited use" and "individual clinical review"—section 8—processes with the aim of moving to a conditional listing and exceptional access mechanism. The cumulative effect of the LU and section 8 programs has been one of the most profoundly negative impacts we have seen upon physician practice over the past decade. In 2004 alone, there were 143,370 requests processed through the section 8 mechanism, a program whose original mandate was to provide a means to access unlisted drugs in special circumstances. Over the years, physicians have spent increasingly more time on paperwork, which means less time caring for our patients. We must reverse this trend. The OMA is committed to working with the government to eliminate LU and section 8 as quickly as possible. This issue is of critical importance to physicians, and the OMA will monitor it closely to ensure that the new programs reflect the government's intent to reduce the burden on physicians and improve patient access to necessary medications.

We also note that section 8 and LU programs have been almost impossible to change because key elements are enshrined in regulation. Therefore, we recommend that Bill 102 and its regulations outline only the basics of the conditional listing and exceptional access programs, and that the government leave the mechanics of the new programs to policy so that they are adaptable to change.

The OMA believes that the government should use this legislation as an opportunity to exercise leadership in controlling costs and promoting appropriate prescribing by prohibiting the sale of physicians' prescribing profiles to companies like IMS which, in turn, sell the information to the pharmaceutical industry for targeted drug detailing to physicians. The OMA recognizes that information about one's own prescribing practices can be useful for educational purposes, but the use of this information for marketing is both unprofessional and unacceptable.

The OMA recommends that government prohibit the pharmaceutical industry from utilizing physician-prescribing information for pharmaceutical detailing.

The OMA would also like to note that Bill 102 does not include any provisions to deal with multiple-drug seekers who continue to be a serious problem in clinical practice and in society. There is currently no integrated system whereby physicians and pharmacists can communicate to each other that narcotics have been prescribed to a patient and that a patient is a suspected drug seeker.

Therefore, we recommend that government consult with physicians and pharmacists about options, such as triplicate prescription pads, in an effort to combat the problem posed by patients seeking multiple prescriptions for narcotics and other controlled substances.

In closing, the Ontario Medical Association has long advocated for changes to the provincial drug system. We are hopeful that Bill 102 will facilitate the transformation of the system so that it is less burdensome for physicians and improves access for patients. Of course, many of the changes will come out of the policy recommendations from the drug system strategy review and from future regulations, and we look forward to discussing those as they develop.

Thank you for the opportunity to respond to Bill 102. We'd be happy to answer any questions you might have.

The Chair: Thank you, Dr. Bach. We'll begin with the PC side. Ms. Witmer, about a minute or so.

Mrs. Witmer: Thank you very much, Dr. Bach. You mention there's currently no integrated system whereby physicians and pharmacists can communicate, and that came up last week in a panel discussion I was on. How quickly do you think that system should be established?

Dr. Bach: I think it's necessary now. How quickly it would take would depend on—I don't know the mechanism to establish that.

Mrs. Witmer: What do you think the benefits would be as far as utilization of drugs prescribing?

Dr. Bach: The difficulty is drug seekers who get repeat prescriptions and sell them on the street. That would be one problem. Others would just be abuse. So I think there are real advantages to controlling access.

Do you want to add something, Barb? I think my staff would like to add something.

Ms. Barb LeBlanc: We have demonstrated very positive effects in other jurisdictions, particularly out west, whereby you see both improvements in safety—

Mrs. Witmer: I guess that's what I was getting at.

Ms. LeBlanc: Yes. There are demonstrated—

The Chair: With apologies, I will have to offer the floor now to Ms. Martel of the NDP.

Ms. Martel: Thank you for being here today. I'm working off your page number 2, where you say you'd like to "comment upon the proposed clause relating to the definition of interchangeability." Which section are you operating under when you make that change?

Dr. Bach: That's subsections 3(4) and (5) of the act.

Ms. Martel: Do you want that taken out altogether or the current legislation that's under DIDFA to go back into effect?

Dr. Bach: We'd suggest that Bill 102 be amended to ensure that the new definition of interchangeability does not permit therapeutic substitution.

Ms. LeBlanc: While we recognize where the government's policy intent is, to provide a little bit of latitude that does not currently exist, we think that this language is too broad, so we would suggest an amendment that helps to clarify—

The Chair: Thank you. The government side. Mr. Ramal.

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Mr. Khalil Ramal (London-Fanshawe): Thank you, Dr. Bach, especially since you are up from London. London's a great city, with a great medical centre. Welcome.

Just some questions about section 8; you were concerned about section 8. I'm wondering if you knew that the government's trying to change section 8, to replace it with a better mechanism; you've probably heard about it. The second question is about interchangeability and broad language. If the government tightened the language better than in this bill right now, do you think the bill would go in the right direction?

Dr. Bach: I think if the language were strengthened, the bill would certainly be in the right direction, and the government should be commended for bringing this forward. We support this approach.

The Chair: Thank you to the members of the government side, and thank you as well, Dr. Bach, and your colleagues Mesdames LeBlanc and Roberto, for your deputation, presence and written submission on behalf of the Ontario Medical Association.

PSYCHIATRIC PATIENT ADVOCATE OFFICE

The Chair: On behalf of the committee, I would now invite our next presenters. They are Stanley Stylianos, program manager, and Lisa Romano, legal counsel, of the Psychiatric Patient Advocate Office, and colleagues. You've seen the protocol: You have 10 minutes in which to make your combined presentation. I invite you to begin now.

Mr. Stanley Stylianos: Good afternoon. As mentioned, I'm Stanley Stylianos, program manager with the

Psychiatric Patient Advocate Office, and this is Lisa Romano, our legal counsel.

I'm going to tell you a little bit about our office. The Psychiatric Patient Advocate Office, PPAO, is an arm's-length office of the Ministry of Health and Long-Term Care. The PPAO provides individual advocacy, rights protection and rights advice to clients in the current and former provincial psychiatric hospitals in Ontario. Through its community rights advice service, the PPAO provides rights advices to nearly all psychiatric units of schedule 1 and 2 hospitals throughout Ontario. For more than two decades, the PPAO has advocated strenuously on behalf of consumers of mental health services in an effort to address significant local, regional and provincial systemic issues.

As a rights protection organization, the PPAO is particularly concerned about the protection of vulnerable individuals who are consumers of mental health and other health care services. Access to needed drug therapies is of paramount importance to individuals diagnosed with mental illness who are recipients of drug program benefits and for whom drug treatment is an essential ingredient in their recovery and continued well-being.

We are hopeful that the proposed legislation will never erect barriers to access for our clients and that the cost will never be a determining factor when deciding if clients should have a particular medication. Clients must be able to access the medication that works best for them and achieves the best results.

The planned strategy has the potential to reduce rising drug costs and benefit consumers through specific procedural changes and increased public involvement and scrutiny. Bill 102, as a first step in the direction of reform, begins to lay a framework that requires further development to be fully realized.

The PPAO applauds the government's efforts to stem rising drug costs and develop a system that more effectively meets the needs of consumers. It is anticipated that any savings realized by an overhaul of the existing system may be reallocated to other areas of need within the health care system, providing both immediate and long-term dividends to consumers and the public at large. However, a number of questions have arisen for us regarding the procedural and structural changes captured in the proposed amendments. In our submission, we would like to highlight several areas that require clarification or strengthening.

The first is the executive officer. Bill 102 transfers the authority and the responsibilities of the minister for managing and overseeing the public drug system to an executive officer who will be appointed by the Lieutenant Governor in Council. This represents a significant shift in the administration of this program, giving considerable and broad authority to the executive officer. The powers of the executive officer include, for example, maintaining and publishing the formulary, designating interchangeable products, listing and delisting drug products, negotiating agreements with drug manufacturers, and ensuring compliance with the legislation.

While the Lieutenant Governor in Council may make a regulation "clarifying, modifying or restricting the functions and powers of the executive officer," the legislation is silent on the qualifications and criteria for appointment of the executive officer. Given the scope and authority of this position and the stated goals for reforming the drug program, the PPAO believes that it is critical that qualifications and appointment criteria be articulated within the legislation. Successfully implementing comprehensive reform to Ontario's drug program hinges on selecting the right individual for this important role.

Next, public interest: Bill 102 permits the executive officer to designate a product in the formulary as a listed drug product, or to designate a product as being interchangeable with another product, if it is in the "public interest" to do so. Given the broad powers of the executive officer, there should be a definition for "public interest." It is a well-established principle of statutory interpretation that words or phrases be precise and unambiguous.

Governance principles: The proposed legislation articulates five governance principles in the preamble to the Ontario Drug Benefit Act intended to enhance both accountability and transparency. In summary, these include: serving the needs of consumers and taxpayers; involving consumers and patients in a meaningful way; transparent operations for all stakeholders; ensuring the most effective use of resources at all levels; and basing funding decisions on the best clinical and economic evidence, and openly communicating these decisions.

The inclusion of these principles underscores a commitment to building a system that clearly works in the interest of consumers and taxpayers, involves and informs stakeholders, and makes evidence-based economic decisions; yet the legislation fails to operationalize these principles. This is an important omission. That the minister and executive officer "may" consult stakeholders with respect to matters arising from the legislation falls somewhat short of the mark, where a requirement for regular consultation might be expected.

Elsewhere, the government has made a commitment to involving patients in the drug listing decision-making process, through representation on the Committee to Evaluate Drugs. In addition, a Citizens' Council has been proposed to provide the public with an opportunity to shape drug policy. A Pharmacy Council has also been proposed to assist in the development of policy and reimbursement models for pharmacists.

The PPAO is supportive of the inclusion of patient representatives in the drug evaluation process, and would recommend further that a subcommittee be formed specifically to address mental-health-related medication issues. We would also recommend that guidelines be established for committee and council membership to ensure equitable representation.

We believe it is fundamental to define mechanisms for the inclusion of stakeholders in the decision-making processes within the statute. Similarly, the legislation should

outline mechanisms and guidelines for public reporting of relevant committee work and drug reviews. This will help to ensure transparency and accountability.

Regular reporting on medication usage in Ontario should be established, and will contribute significantly to heightened public awareness and support the aim of meaningful involvement of consumers.

In keeping with efforts to promote the appropriate and safe use of medication, the creation of a database that advises the public about adverse medication events should be considered.

Improved accessibility: Under the proposed legislation, the executive officer will have the authority to add or remove drugs from the formulary without the introduction of a regulation. This will, to an extent, streamline the process of adding and removing drugs from the formulary. Access to interchangeable drugs will be improved insofar as drugs may now have the "same amounts of the same or similar active ingredients in the same or similar dosage form...."

The PPAO supports initiatives to streamline the process of drug inclusion in the formulary and to broaden the scope of what might be considered equivalent and interchangeable, providing mechanisms for the inclusion of consumer feedback in the decision-making process are established. Some consumers have expressed concern that generic products considered to be biologically equivalent to brand name products may prove less effective. Though we understand that empirical findings do not support this concern regarding reduced efficacy for generic medications, we believe that anecdotal evidence from consumers, physicians and pharmacists should be considered.

Many clients of the PPAO have very low or limited incomes as they are in receipt of some form of social assistance, either Ontario disability support program or Ontario Works. We would recommend that clients whose only source of income is provided by the provincial government be exempt from paying any co-payment when having their prescriptions filled.

Complaint process: Neither the legislation nor announced government initiatives have identified a complaint or appeal process respecting decisions of the executive officer. In our opinion, this is a critical omission. There needs to be some avenue to address concerns arising from particular decisions, policies or the management of the public drug program in general.

There is a potential advantage in having a single, dedicated individual such as the executive officer administer the public drug program, providing he or she has the appropriate background and expertise. The overarching authority of this role in decision-making may significantly simplify and streamline decision-making.

However, with the delegation of the minister's authority there is a potential loss of political accountability. The Lieutenant Governor in Council may potentially change or limit the function and power of the executive officer through the introduction of regulations.

The PPAO holds that there is a need to establish a complaint resolution process as an additional and more

immediate accountability mechanism. Without such a process, stakeholders are deprived of a means of addressing their concerns and tempering the authority of the executive officer.

Finally, the PPAO supports the proposed legislation in the context of the government's overall strategy to increase reliance on generic drugs, broaden the array of effective, interchangeable medications, increase consultation with consumers and other stakeholders, and improve transparency through public reporting mechanisms.

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The Chair: Thank you very much, Mr. Stylianos. We have about 30 seconds each, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you very much. With respect to a complaint resolution process, do you have any ideas how that might work that you could share with the committee?

Mr. Stylianos: We haven't thought through this very clearly, but I think we would say we would like to see something added to the legislation that would identify the process.

Ms. Martel: As an appeal mechanism.

Mr. Stylianos: As an appeal mechanism.

The Chair: Thank you, Ms. Martel. To members of the government side, Dr. Kular.

Mr. Kular: Thank you for your presentation. I'm a family doctor turned politician; I still do some medical practice. The question I have for you is, because you have said in your presentation that you would like qualifications and criteria for the executive officer, what do you think should be the qualifications and criteria for selection?

Mr. Stylianos: I think there has to be a sensitivity to issues from a variety of stakeholders. Clearly, I think the individual who takes on this role has to have a non-partisan perspective, and there has to be something within the legislation to guarantee that.

The Chair: With apologies, I will have to intervene. Thank you, Dr. Kular. To the PC side, Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation. Mine has to do with improved accessibility. You recommend the inclusion of anecdotal evidence in drug listing decision-making. What process would you suggest be used in order to make that happen?

Mr. Stylianos: That's another issue that I think requires some further thought on our part. There is talk about a consultative process in terms of working with consumers. Perhaps if that mechanism were established, there would be an opportunity to discuss some of that more fully in terms of what mechanism would work best in making some of those decisions.

The Chair: Thank you, Mrs. Witmer, and thanks to you as well, Mr. Stylianos and Ms. Romano, for your presence, written submission and deputation and testimony today on behalf of the Psychiatric Patient Advocate Office, the PPAO.

GORDON PHARMASAVE

The Chair: Now, on behalf of the committee, I would invite our next presenter, Mr. Ron Chapleau, owner of Gordon Pharmasave. Mr. Chapleau, as you've seen, you have 10 minutes in which to make your deputation, which begins now.

Mr. Ron Chapleau: Good afternoon. Thank you for taking the time to listen to me on a topic that will have a major impact not only on myself but on my family, my staff and my patients. My name is Ron Chapleau. I'm a pharmacist and an owner of a small-town pharmacy in Kincardine, Ontario, a town of about 6,000 on the shores of Lake Huron, for those of you who don't get up there that often.

Let me preface my criticisms of this bill by saying that I believe in all honesty that I think it's well-intentioned and it's necessary. I don't think that anybody who practises health care or who is responsible for administering the money to fund it are under any illusions that the present situation is sustainable for the long term. Changes, including cuts, are required, and I and many of my colleagues are prepared to take a hit to our bottom lines in order to maintain or hopefully improve the level of care that citizens of Ontario have come to expect.

However, where this bill falls short, in my opinion at least, is in its execution. I know it will have a negative impact on the quality of health care pharmacies are able to provide and will also lead to a loss of stores, particularly in rural Ontario where the population base is not large enough to support a 10,000- to 15,000-square-foot store with groceries, cosmetics and the like. While I applaud some of the amendments that have been made so far, such as the elimination of the \$25 cap on markups and the proposal of a 20% educational allowance, these do not go far enough to keep some single-town pharmacies operating or to prevent the rest of us from drastically altering our staffing levels and, hence, the level of care we are able to provide.

Let me use my own practice as an example. Our pharmacy is the only one in the downtown core of Kincardine. We have a high percentage of seniors, higher than the average in Ontario; due to the fact that we lack public transportation, most seniors live in that core. We're open seven days a week. We are very busy. I would guess, based on the stats I've seen, we're probably in the top 25% of independent pharmacies. I staff at least two, and often three, pharmacists throughout the day, with four or five assistants, and that's every day of the week with the exception of weekends. My wife, also a pharmacist, and I work between 100 to 115 hours a week, along with the family, so our ability to take on more work ourselves is pretty much nonexistent.

I've been told by reps and by people in my company that we staff generously based upon our volume, but there is a compelling reason for this. We, like many of our peers, work in a town that has a shortage of physicians. As such, much of our day—and evenings, in fact, in a small town—is spent handling queries and

situations that probably fall outside or beyond the scope of our practice as it has been traditionally defined. We do this with the blessings of our physicians, who are all working heavy hours and carrying patient loads that are often well beyond those that are recommended by their college.

We also do this because we are the most easily accessible, and frequently the only accessible, health care worker in our area. Hence, I serve many roles beyond dispensing in my day. I act as a triage nurse, sending some patients to emerg. since we do not have a walk-in clinic and the odds of seeing a doctor in the same week in Kincardine are nearly zero. Far more frequently, I talk them out of a visit to emergency when they could probably help themselves just as effectively. I'm not sure what I save the government in unnecessary hospital visits, but not a day goes by that I do not talk someone who has a run-of-the-mill cold or allergies out of a needless trip to the emerg. There are days when this happens five to 15 times.

As well, frequently we deal with patients who have just been told they have diabetes or some other life-altering diagnosis in the space of a 10-minute office appointment with their doctor. This, once again, is the reality of towns like Kincardine. It's not that the doctors don't care, it's just a fact that they have huge patient caseloads, and if they're going to see their patients in a timely manner, they have to keep things moving. As a result, we frequently spend significant amounts of time sitting in our counselling rooms giving patients the basics of the disease state and the changes they may need to make in order to take control of their own health. This is often followed by one or frequently more phone calls, knowing full well that most of my patients do not fully grasp everything they're told the first time, especially when they may be in an emotionally distraught mood.

Other parts of our day are spent consulting with our home care nurses, offering advice as they see their clients throughout the day. Their inability to get hold of the patient's doctor sometimes in a timely manner has led them to call us with queries or to run situations by us in order to get an opinion as to how necessary it is to get the physician involved. When physician involvement is required urgently, but they're unable to do so before their next client visit, we'll often take over the situation and follow up with the doctor as best we can.

Another part of our day is writing recommendations or concerns to our family doctors about some of the patients whom we see on a day-to-day basis but who may not have appointments for weeks or sometimes even months. It is through this that we are able to intervene on our patients' behalf on an as-needed basis, doing anything from suggesting add-on therapy, modifying existing therapy or, yes, even eliminating some drugs that are causing more harm than good. In this way, patients hopefully get quick resolution to their concerns without having to visit the emergency room and consulting with a doctor who may know little or nothing about them. It also helps to keep our family physicians updated on their

patients and raise their awareness of the need to possibly intervene before the next regularly scheduled appointment.

Added to these day-to-day tasks are the weekly newspaper column we write in our paper about patient-oriented health care and the seminars we give in our community for free about such topics as Parkinson's, antibiotic resistance, fall prevention in seniors, vaccines, and the list goes on and on.

I think the two constants of all of the above roles are, (1) I truly believe they improve the health and well-being of my community and, (2) I receive no direct and, really, no indirect compensation other than customer loyalty. I do not think anything I've mentioned here is really any different than what a lot of my colleagues are doing throughout Ontario. I do not begrudge doing these. They're what make my job more enjoyable and why I bought my store in the first place. But they cost money to perform. I've had a number of sales reps tell me not to worry, that the proposed \$50-million pool for cognitive services was practically made for us. My worries or concerns are twofold. One, I do not know when I'll have the time to fill out the necessary paperwork to prove my intervention and access this money. As I mentioned earlier, I feel strained by my time constraints as it is and I do not want to take time away from patient care to fill out more paperwork. Second, there is very little chance the money I could gain from that pool and the changes in markup and dispensing fee will come anywhere close to the money I will lose from generic companies in the form of rebates. The beauty of that money—and I admit, it's my own opinion—is that it's money I can earn without spending any time away from my patients. There is no other way I could spend so much time doing work for free and still run a viable business.

As I mentioned earlier, I have no problems with absorbing a hit to my bottom line. Cutting the generics to 50% of that of the brand will hurt me substantially because of those rebates, as will the drop in the markup, but I can survive that and I can continue to staff my pharmacy adequately. Besides that, at least from my point of view, it makes sense from a taxpayer point of view. However, eliminating the generic rebates or capping them does put my pharmacy at risk, since I bought mine just a little over two years ago, in April 2004, under the old system, at what I would say is fair market value. It also puts many of my neighbouring pharmacists whom I've talked to at risk as well. They have told me the generic rebates are the difference for many of them between operating in the red versus the black.

I also do not see what this accomplishes for the taxpayer. If the price that the government pays is fixed, how does it aid the taxpayer to constrain my ability to access this money that comes out of the manufacturer's profits?

As an aside, I actually had a conversation a little while ago with a member of the government's health bureaucracy. During our discussion regarding the rebates, amongst other points, he made the point that the system was never intended to have all these extra payments to

pharmacy. He said what they intended to pay for was a fair price for the drug, with a reasonable markup and a reasonable fee. My response to him was that the price of a drug, at least in my opinion, has always included the raw material cost, the research that goes into discovering it and bringing it to market, a reasonable profit for the company itself and, like it or not, the cost to advertise and market it. This is the same for both brand name and generic companies.

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These rebates are the main marketing tool that generic companies have. Eliminating or capping these takes away the ability of some of these smaller companies to generate market share and may in fact act as a disincentive to international generic manufacturers considering entering the Canadian market, which can only lessen future competition.

As well, I don't think there's any way you can justify a \$7 dispensing fee as being reasonable in this day and age. The average fee in Ontario right now is \$10.99, even taking into consideration those chains that use pharmacy as a loss leader. The Ontario Pharmacists' Association estimates the true cost of dispensing at \$10. You can probably quibble with those numbers and dissect them, but no matter what you do, the break-even point is well clear of \$7. We've been able to survive this because the generic industry has subsidized what the government probably should have been paying all these years. From a government perspective, I've always thought this would have been ideal.

The bottom line for me is this: If this bill goes through as is, it will be difficult for me to make my loan repayments to my financial institution. It will absolutely force me to reduce staff and will change the way I do business so that more of what I do actually generates direct revenue. Even with those changes, the future of my store is fragile. If I'm forced to close or go into fill-and-bill mode, I don't think you'll accomplish what you actually set out to do, no matter what you save on the drug file.

The Chair: Thank you, Mr. Chapleau. We'll have about 20 seconds each. To the government side. Mr. Wilkinson.

Mr. John Wilkinson (Perth-Middlesex): Thanks for coming in, Ron. As a rural member, I appreciate your input and the input I've been receiving. So, your position is that we should have rebates, which you say are being used to provide cognitive assistance to patients—which are not provided by all pharmacists—rather than actually paying pharmacists for the cognitive fee and actually—

The Chair: With apologies, Mr. Wilkinson, the question will have to remain rhetorical. Mrs. Witmer.

Mrs. Witmer: Thank you very much, Ron. I hope that the government and all people in the province of Ontario appreciate the outstanding role that individuals such as yourself play in our communities. The compassion and commitment that you have demonstrated and the services you provide are absolutely outstanding. Thank you very much.

The Chair: Thank you, Mrs. Witmer. The third party. Ms. Martel.

Ms. Martel: Thanks for coming. Let me be clear, then, that \$50 million spread across all these pharmacies is about \$17,000 per pharmacy. That's not going to make up the difference you're going to lose in promotional rebates; is that correct?

Mr. Chapleau: It's not even 10%.

Ms. Martel: So it's a significant loss for you.

Mr. Chapleau: Yes.

Ms. Martel: Can you put it in dollar terms for us?

Mr. Chapleau: There's an over \$200,000 difference.

The Chair: Thank you, Ms. Martel, and thanks to you as well, Mr. Chapleau, for your presentation and deposition to the committee.

CANADIAN HEART RESEARCH CENTRE

The Chair: I would now invite our next presenter, and that is Dr. Anatoly Langer, heart specialist and chair at the Canadian Heart Research Centre.

Dr. Langer, as you've seen the protocol, you'll have 10 minutes in which to make your combined presentation. I invite you to begin now.

Dr. Anatoly Langer: Thanks very much, Mr. Chairman. It's a pleasure to be here. My name is Dr. Anatoly Langer. I am a cardiologist at St. Michael's Hospital. I'm a professor of medicine at the University of Toronto. I'm also chair of the Canadian Heart Research Centre, which is a non-profit academic organization dedicated to research and education in the treatment and prevention of cardiovascular disease. Therefore, as you can tell, I am naturally concerned about what this legislation may mean for the future of research right here in Ontario. Before I go into that, I would like to first discuss the impact of Bill 102 from the physician's and patient's point of view.

As a physician, my primary interest in the proposed legislation is its potential impact on the ability of doctors like me to provide optimal care to our patients. Appropriate drug utilization and the ability to support optimal, affordable care for our patients is a principal concern of all physicians.

"Appropriate utilization" means evidence-based. By that, I mean treatment according to guidelines which are based first on efficacy shown in clinical trials; second, safety demonstrated through experience; and third, cost, as an important but not the deciding factor.

Based on the available evidence, I would suggest that therapeutic substitution based on cost alone would not be in the best interests of Ontarians, nor would it lead to any long-term cost savings. Instead, drug-pricing strategies that result in limiting access to certain pharmaceuticals may well have the opposite effect: increased risk to patients and higher overall health costs.

Models of using drug interchangeability, such as the one that I think may be contemplated in Bill 102, rest on a very important assumption: that all drugs in the same class perform similarly. This appears to be an increasingly common assumption among politicians but is rejected

by the scientific and medical community since there is absolutely no data to support this assumption.

While all members of a drug class may have similar effects, substitutions may be harmful to patients for a wide variety of reasons, including individual response by the patient, safety and tolerability, drug interaction, other co-morbidities, and appropriate dose selection. Safety and efficacy of class members vary significantly and, therefore, evidence for improving patient outcomes cannot be extended to all members without scientific proof. In God we trust; the rest must show data.

The New Zealand experience with substitution of medications within a cholesterol-lowering class of agents highlights the potential hazards of therapeutic substitution. As reported in *The Lancet*, a prestigious medical journal, substitution of a proven drug, Simvastatin, with the less vigorously tested, less effective, but cheaper drug Fluvastatin resulted in an increase in average cholesterol levels and a statistically significant increase in arterial thrombotic events, meaning heart attacks and stroke. Thus, therapeutic substitution driven by cost and without consideration of efficacy and safety is not in the best interests of the patient and may result in patient non-compliance, additional physician visits, prescriptions and laboratory testing.

In general, health care costs have not declined in countries where drug interchangeability based on pricing has been in existence. The United States provides an interesting example, and an important example, at that. When we compare the US Medicaid database in 20 states with restrictive formularies to the 30 states without formulary restrictions, we see a 13.4% lower drug cost, but at the same time there is a 39.1% increase in cost for in-patient services and a 28.7% increase in cost for physician services. Thus, far from saving money, the evidence that we have suggests that cost-cutting approaches to drug spending result in much higher costs elsewhere in the health care system, such as hospital visits, additional tests and physician visits.

In summary, drug interchangeability cannot be recommended in light of published evidence, and important concerns for potential harm exist for people in Ontario. This policy will jeopardize physicians' ability to choose proven, evidence-based, patient-specific therapy, and denies patients the access to optimal treatment and future advances.

Bill 102 appears to provide the government with a framework that could permit a variety of approaches to cost containment and could limit therapeutic options. If that is not the government's intent, then the language in the bill needs to be clarified to ensure that this cannot and will not occur.

In the field of cardiovascular medicine, I am an expert on drug utilization, and I cannot tell at all what kind of strategy for drug interchangeability is planned in Bill 102. That's a problem.

Before I close, I would like to make a few comments about the potential impact of Bill 102 on the research environment in Ontario. The Canadian Heart Research

Centre is proud to be an Ontario-based organization serving research needs throughout North America. We work regularly with some of the best and brightest researchers who can be found anywhere in the world. Their work is truly cutting-edge, not only generating new discoveries that will be able to sustain health and fight disease into the future, but also providing for jobs and investment.

As someone acting in the research community, I'm concerned about the messages that are being sent by this bill—the message that new pharmaceutical products and life-saving medications are only appropriate if they are cheap.

The Canadian Heart Research Centre monitors the utilization of evidence-based therapies in Ontario and across Canada, and I can tell you without any shadow of a doubt that appropriate life-saving medications are underutilized in Ontario and Canada, resulting in a care gap that is costing thousands of Canadians their lives, and we do have the data.

As a clinician researcher, I'm not alone in being concerned about the implications for research and access to patients; many of my colleagues also have serious questions about this bill. The process in which this bill is being rushed through the Legislature—and, for that matter, through this committee—without adequate time for physicians and for the public to understand and to comment is remarkable for something as important as this bill.

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I contend that the Ontario government should not proceed with inappropriate cost-cutting exercises in health care without appropriate consultation with Ontario patients, physicians and other health care stakeholders. As citizens of Ontario, we recognize the importance of fiscal responsibility and offer our assistance in identifying appropriate strategies that do not risk the safety of our patients.

My concerns and our concerns are not new and have been previously formulated in a petition to Premier Dalton McGuinty last year in the letter that I have provided for your review.

Thanks very much for the opportunity to be here and discuss it with you.

The Chair: Thank you very much, Dr. Langer. We'll begin with the opposition side—about 45 seconds or so.

Mrs. Witmer: I very much appreciate an expert such as yourself being here. You have certainly indicated and emphasized many of the concerns that we have talked about: the impact on patients and the fact that some of these measures threaten lives and the quality of health care of Ontarians when we take a look at cost alone.

This government is ramming it through. Tomorrow, we're going to submit all of the recommendations and amendments, and we have absolutely no time for discussion or debate. It's all going to happen tomorrow, so it does lead one to the conclusion that perhaps the government does have something to hide.

I appreciate that you are here today and have put forward your expert opinion. I hope that, at end of the day, the government will listen to your concerns and the concerns of your colleagues. Thank you very, very much.

The Chair: Thank you, Ms. Witmer.

We'll move to the third party, Ms. Martel.

Ms. Martel: Thank you for being here today. You've said to the committee that you've looked at provisions around interchangeability and you're as confused as ever before. I think some of us are confused about that as well.

Can you respond more fully to what you see or what you don't see, and why you're worried about that?

Dr. Langer: In fact, I'm not confused; I'm in the dark. One must have some details to read about in order to be confused. There are no details provided. This is the most open-ended, most dangerous and most completely undefined bill I've ever seen. I cannot put my finger on any detail in any fact. I understand it's political legislation. I understand that it has to be rounded and water-proofed but, my God, there is absolutely no detail here as to how the drugs are going to be prescribed. This is how patients need to be treated. This is far too important to be left without detail.

The Chair: Thank you, Ms. Martel.

The government members. Ms. Wynne.

Ms. Wynne: Thanks for being here, Dr. Langer. A couple of things: I know you're aware of the extensive consultation that was done before this legislation was drafted. There were hundreds of meetings and many people from the profession were talked to.

It's interesting to me that, given we are not recommending therapeutic substitution, we are not recommending reference-based pricing, the citizens' groups that have come before us, the activists in the community, although they have some concerns about some of the details in the bill, are generally in agreement with us that there needs to be a move towards more sustainability in the drug system. So your concern about citizens doesn't seem to be borne out by the hearings we've had.

Can you comment on sustainability of the system?

Dr. Langer: Sure. I don't think you've had any experts dealing with this bill because there are no details, so I think—

Ms. Wynne: You talked about citizens having comment.

Dr. Langer: I know about the citizens.

The example is there—I've provided it—in New Zealand. If you simply do not have a definition of how the drugs can be counted on to be interchangeable, then you basically will be killing off more people than you're going to be managing successfully. You cannot simply substitute one drug with another. I, and only I as a physician and an expert and a specialist, can provide that.

Ms. Wynne: You have the authority to put "no substitution." That's not being taken away from physicians. That remains.

Dr. Langer: Can you tell that by reading this bill? I cannot.

The Chair: Thank you, Ms. Wynne, and thank you, Dr. Langer, for your presence. On behalf of the committee, we'd like to thank you for your written deputation and submission on behalf of the Canadian Heart Research Centre.

Mr. O'Toole: Point of order, Mr. Chair: Just to put on the record that Dr. Langer's expert opinion is something very lacking in this. I'd like it to be recorded. This is being rammed through without any regard for the input.

The Chair: Mr. O'Toole, with respect, that is not a point of order.

DURHAM REGION HEALTH COALITION

The Chair: I will now invite our next presenter on behalf of the committee, Mr. Jim Freeman, the co-chair of Durham health coalition. Mr. Freeman, as you've seen, you have 10 minutes in which to make your full presentation. I invite you to begin now.

Mr. Jim Freeman: First, I'd like to thank you all for inviting me here today. My name is Jim Freeman. I'm the co-chair of the Durham health coalition. I'm also president of the Durham Region Labour Council.

Let me start. The Durham health coalition is a non-partisan citizens' group dedicated to preserving and extending a quality, universal, one-tier public health system. Our members include health professionals such as nurses and technologists, concerned citizens, seniors, unions and local business people. We are affiliated with the Ontario Health Coalition and work to honour and strengthen the principles of the Canada Health Act.

Our overview, when we looked at the bill: Drug costs in Canada are the fastest rising component in health care spending, rising at about 8% per year in real dollars. We believe that it is necessary, for the long-term sustainability of the health system, that governments act to control prescription prices and the cost of drugs. To that extent, we support several of the provisions that are included in this bill:

(1) We support widening generic substitution for more expensive brand name drugs. All the credible studies that we've seen and all our medical experts agree that this will cost less and will not harm patients. Brand name companies frequently seek to limit the impact of generic substitution by making slight alterations in the format of their drugs just before the patent expires so they can extend their market monopoly for another patent period and keep the prices high. The government's proposal to deal with this is a good one, and we support it.

(2) Stopping payoffs to drugstore companies by generic companies, called rebates: These rebates are given to pharmacies by drug companies as a payoff for stocking drugs, product placement etc. Most Ontarians have never heard of this; I think if they had, they would, as I was, be shocked when they heard about it. We're not talking about product placement for candy or magazines here.

Moreover, the government pays the drugstores the full cost of the drugs, and the drugstores pocket the difference between the amount they charge the government and the amount they pay for the drugs. So the Ontario drug program is effectively subsidizing for-profit pharmacies, especially the big chain pharmacies. We support the government's intent to use its bulk-buying power to

get lower costs from the drug companies for the people of Ontario and to eliminate these so-called rebates.

(3) Controls on pricing and markups for drugs: The bill has been accompanied by several announced initiatives that are not actually in the legislation, including the introduction of patient representatives in the drug review process and a Citizens' Council. We support these initiatives, and note that it is important for these patient and citizen representatives to be totally independent from drug industry influences.

In our view, the legislation is an important step. We believe that the initiatives contained in this bill will not harm the health of patients and will work to control the cost of drugs. I might add that if these provisions aren't included in the bill, then there is really nothing for the Durham health coalition to support. If we can't control the cost of drugs, then there is really nothing in this bill for our health coalition to support.

What is the opposition saying? We're aware that some of the pharmacies are opposing the ban on rebates and the reduction of their markups. However, these two initiatives they oppose will save money for the Ontario drug program, and we are supporting them. Regarding the rebate issue specifically, the pharmacies most affected are the big chains that are using their buying power to get rebates from drug companies in return for stocking their products.

We're also aware that brand name drug companies argue that generic substitution will threaten research and development jobs and harm patients. We do not believe either claim. There have been several published studies done on British Columbia's reference-based pricing system, involving a much wider generic substitution than that proposed by Ontario, which have found that patients are not harmed by the substitution. Despite the R&D claims of the drug companies, the evidence is that the non-profit sector and in fact government spend on and perform more R&D than the extremely wealthy drug companies. Moreover, the vast majority of the new drugs pushed onto the formulary by the drug companies offer few therapeutic advances and suck up many health resources. It is more accurate to say that the big drug companies, which are among the top wealthiest companies in the world, are simply trying to protect their monopoly in order to protect their profits, and this is all coming at the expense of the public health system.

In conclusion, we believe that the government, through this proposed legislation, attempts to balance the need for drug cost control with the protection of patient access to needed drugs and safety issues. Based on the available information and evidence, we've concluded that the legislation will likely work to contain costs and will not harm patients. This legislation will provide benefit to Ontario's health system and will protect access for Ontarians using the Ontario drug benefit program. We believe this is an important first step.

But Ontarians need more. Canada and the United States stand out among industrialized countries as two of the wealthiest nations without national drug plans. Yet

pharmacare has long been envisioned as an essential step in the evolution of medicare. Going back as far as 1964, it was recommended by Justice Emmett Hall.

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While we support this legislation, we also strongly support the Ontario government advocating at the national level. All Ontarians, and indeed all Canadians, need a safe and affordable national pharmacare program that would provide equal access to prescription drugs, be publicly funded and controlled, and cover essential drug costs.

While provincial governments pay the costs of provincial drug plans and have some regulatory powers, many regulatory powers still rest with the federal government. We hope the Ontario government will play a leadership role in advocating for a national formulary, an independent agency with more rigorous practices for drug approval, patent reform, post-marketing safety monitoring, enhanced controls on drug company advertising, and other measures that would improve our drug regulation regime. And we support a national pharmacare program.

The Chair: Thank you, Mr. Freeman. We have a minute or so, beginning with the third party.

Ms. Martel: Thank you for being here today. At the bottom of your page 2, I believe, you talk about announcements that are not actually in the bill: the patient representatives in the drug evaluation process and the Citizens' Council. Of course, you're right, they're not in the bill, so one does question the government's priority on this or attachment to this. If those don't appear in the bill, what would be your concerns with respect to the legislation and citizen participation?

Mr. Freeman: If those don't actually appear in the bill, especially the patient and citizen representatives, then we don't see why you would have a citizens' committee. They obviously have to be far removed from the drug industry, period. We don't need any influence from the drug companies on that committee. But I believe if that committee and the patient and citizen representatives aren't there, then we have a problem with—

The Chair: Thank you. To the government side.

Mr. Peterson: Thank you very much for the presentation. You argue for a national pharmacare system. In Ontario right now, our plan costs about \$3.2 billion a year. We would have to spend about \$6.4 billion if we wanted to put that across the board. We put in the health care tax, a levy that caused a huge cry amongst everyone about people having to pay and be more accountable for their health care costs. If we increased our taxes to pay for this and tried not to run a deficit, this would force us to tax everyone again almost more than the equivalent of what we've already taxed them. Do you see this as being at all workable for a government to even attempt, to be able to afford a national plan and put it on the backs of current taxpayers?

Mr. Freeman: I believe it is. You mentioned the Ontario health tax, but now we're talking about spreading those costs out over—

The Chair: With apologies, Mr. Peterson, I will have to offer it now to the opposition side.

Mr. O'Toole: Thank you very much for your presentation, Jim, and the work you've done. It's good to see you.

You were here for the presenter prior to you, Dr. Anatoly Langer. Clearly, in summation, he said that it puts patients at risk. In here, he says that Bill 102 is not good for patients. He's a cardiologist specialist; he teaches medicine. He says that Bill 102 is not good for research and innovation, that Bill 102 is not transparent, and therefore cannot proceed in its current form without appropriate and full consultations with medical and research experts.

We've heard this for the last week or two on this, and you're grudgingly—I think perhaps someone's urged you to support this; I'm not sure who it would be. Ms. Martel hasn't urged you to; she's against it, as far as I can gather. Why would you support this bill when the experts are telling us that there may be some good intentions here, but there's not much you can see? Why would you support it when it's—

Mr. Freeman: Well, sir, all the studies—

The Chair: Mr. O'Toole, with apologies, I will have to call this presenter's time.

Mr. O'Toole: See, that's the travesty of this.

The Chair: Mr. Freeman, thank you for your presence and deputation on behalf of the Durham health coalition.

MULTIPLE MYELOMA SUPPORT GROUPS OF

HAMILTON, TORONTO AND LONDON

The Chair: I would now invite on behalf of the committee Mr. Rob Darwen, a member of the London and Hamilton multiple myeloma support groups, and your colleagues. As you may have seen, you have 10 minutes in which to make your combined presentation. I'd also ask that members of your deputation identify themselves for the purposes of the permanent record recording here. I invite you to begin now.

Mr. Rob Darwen: Thank you for the opportunity to address your committee. My name is Rob Darwen and with me, on my right, is Mr. Michael Kacsor and, on my left, Ms. Carolyn Henry. Together, we represent the Multiple Myeloma Support Groups of Hamilton, Toronto and London. Mike and myself will be sharing the time allotted for our presentation.

I am a 52-year-old resident of Ancaster, Ontario, and a survivor of multiple myeloma, a cancer of the bone marrow. I've been the beneficiary of various forms of effective treatment that have allowed me to survive and, to varying degrees, live a fairly normal life. This has been possible, in part, through the loving support of my wife and family.

As I sit before you, I may appear to be in relatively good health. The truth is somewhat different and, although I am in remission, the deadly myeloma cells still reside within me. So while I'm pleased to be healthy

enough to come here and be with you today, many other myeloma patients within the province are not so lucky. One of them is Laura McCallum from Dundas, a young wife and mother with two children, who has recently relapsed and is currently under treatment. We're here on behalf of Laura and other patients like her who are in the battle of their lives.

Like many people, when I was first diagnosed with cancer in 2003, I thought it was an immediate death sentence. My oncologist at Hamilton's Juravinski Cancer Centre helped me to regain my optimism by explaining to me the numerous treatment options that were available. Sadly, much of my optimism has been extinguished because of the position of the current provincial government that life-extending cancer drugs deserve significantly less support than those that provide a cure. I believe that this distinction between life-extending and curative treatments is unfair. Fighting cancer is based on gradual, progressive incremental improvements in treatment.

With the introduction of Bill 102, cancer patients have a glimmer of hope in the good words that the government has used in reference to improved access to life-extending drugs. However, we remain wary that these intentions will wither under the economic and bureaucratic pressures during the implementation process. We're here to urge you, as members of this committee, to ensure that the following features are clearly defined in the final legislation for the benefit of all cancer patients in Ontario: First, a conditional listing that allows access to new drugs during their evaluation prior to their formal listing; secondly, rapid funding decisions for breakthrough drugs to treat life-threatening conditions; and thirdly, a quick-response, exceptional-access mechanism that patients can utilize when they have no other method of obtaining life-saving or life-extending drugs.

These provisions are a good start, but only if they work. Cancer patients have consistently expressed to the government that time is critical. When we need drug treatment, we cannot afford to wait. Oncologists who work to take care of us must have the latitude to select the appropriate treatment program for each patient. It might be cheaper to have one drug therapy per disease, but that's simply not how cancer should be treated in the 21st century.

I'll now turn it over to Mike Kacsor for the second part of the presentation.

Mr. Mike Kacsor: Good afternoon. My name is Mike Kacsor, and I'm a self-employed environmental engineer. I represent the 350 members of the Toronto and District Multiple Myeloma Support Group.

According to the Canadian Cancer Society, over 1,800 Canadians will be diagnosed with this disease this year. Former Ontario Health Minister Tom Wells suffered from myeloma. In 1969, during Mr. Wells's tenure as health minister, medicare was introduced in our province. He was a very active member of our Toronto support group after his diagnosis until his death in the year 2000.

I was diagnosed with multiple myeloma in April 1997 at the age of 45. At diagnosis, it was suggested that I

should get my affairs in order as it was unlikely that I would live more than two years. I immediately sought a referral to Canada's only myeloma clinic at Princess Margaret Hospital. I have been very fortunate to be treated by a dedicated team of doctors and nurses who have not been afraid to push the envelope. I have participated in six clinical trials and received access to innovative treatments and medications before they were readily available. I am convinced that I am alive today, working full-time and paying my taxes solely as a result of access to these treatments and drugs.

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It is extremely disappointing for all Ontario myeloma patients that Velcade, the first in a new generation of drugs for the treatment of this disease, has not been approved for provincial funding. It is tragic that the ministry chose to ignore the advice of the world's leading hematologists who treat myeloma every day and its own medical experts who developed the provincial evidence-based guidelines for the use of this drug. Why are Ontario myeloma patients different from patients in other parts of Canada? They have access to Velcade.

All cancer patients in the province of Ontario have concerns about Bill 102. There are a number of issues in the ministry's drug reform announcement which require more clarity, detail and transparency.

Ontario's cancer patients are looking for assurances that we will have access to necessary medications precisely when we need them. Unfortunately, the recent proposal coming from Cancer Care Ontario, to have all patients who require cancer drugs not currently funded by the province pay for these drugs out of pocket, is a profound step in the wrong direction. This runs contrary to the stated intention of the legislation.

The bill must address the needs of cancer patients who do not have the means to pay for effective life-extending drugs. Private insurance is simply not available for many cancer patients. Believe me, a diagnosis of cancer is devastating. The burden on patients and their families who have to mortgage their homes or cash in their children's college savings plans in order to pay for essential cancer drugs is wrong. This is not better access to better care for all Ontarians, rich and poor. Thank you very much.

The Chair: Thank you for your deputation. We'll now have about a minute or so per side, beginning with the government side, Mr. Ramal.

Mr. Ramal: Thank you very much for your presentations. I had the chance to speak to Carolyn Henry in my office in London. We talked about the intent of the bill. I guess you've been listening to a lot of deputations. A lot of people from different stakeholders and backgrounds spoke about this stuff. I strongly believe that the intent of the bill is just to save some money and also to elicit more drugs which directly and indirectly affect patients on cancer drugs, especially those who cannot wait because time is not on their side. I believe in general that the intent of the bill is just to strengthen the ability of the ministry and

the government to list more drugs and enhance service across the whole spectrum.

Basically, thank you very much for your presentation. I have no questions.

The Chair: Thank you, Mr. Ramal. We'll move to the opposition side, Mr. Jackson.

Mr. Jackson: I appreciate very much your being here. You all remember George Petrunas. I was with his wife and children yesterday at a soccer event and it brought back some memories about the fight we've been having to get Velcade.

As you know, I share with you the concern that the new cancer drug program was taken away from Cancer Care Ontario, ceded to the minister, and now it would appear that it's going to shift over to this new unelected, unaccountable person who will determine what drugs are eligible. Given that the minister has historically and consistently said we just can't afford this drug, how are we supposed to expect that this is going to be available in Ontario if they're going to cut half a billion dollars out of the program and no elected person is accountable to speak to cancer patients?

Mr. Darwen: I suppose that is a very difficult question, but members of the public can only be guided by the government's stated intention. When I corresponded with Dalton McGuinty on this subject, he responded by saying, "We firmly believe that all Ontarians, regardless of their ability to pay, deserve timely access to the best possible health care." While it's difficult for me—

The Chair: Thank you, Mr. Jackson. With apologies, I will have to intervene; the floor to Ms. Martel of the third party.

Ms. Martel: Thank you for being here today. Cancer Care Ontario, which was before us last week, made it very clear that section 16 in this bill, that provides exceptional access, will only apply to oral medication for cancer patients, not for intravenous medications that are provided in a hospital on an outpatient basis. I believe that section 16 needs to be amended so that it will allow oncologists to apply to the executive director and have the executive director or executive officer have the new drug funding program at CCO pay for some of these drugs on an exceptional basis. What would you think of that proposal, so you'll actually be covered under this bill?

Mr. Kacsor: I think it's absolutely essential—absolutely that that mechanism be available.

Ms. Martel: Because otherwise there's no exceptional program for you to apply to for intravenous cancer drugs.

Mr. Darwen: Yes. The issue has been the absence of coverage for IV cancer drugs, which tend to be extremely expensive, in the tens of thousands of dollars.

The Chair: Thank you, Ms. Martel.

On behalf of the committee, thank you to you, Mr. Darwen, Mr. Kacsor and Ms. Henry, for your deputation on behalf of the multiple myeloma support groups.

WESTMOUNT PHARMACY

The Chair: I now invite our next presenter, and that's Ms. Carla Heinrichs Bradshaw, the owner of Westmount Pharmacy. Ms. Heinrichs Bradshaw, as you've seen, the protocol is that you have 10 minutes in which to make your combined presentation. I invite you to begin now.

Ms. Carla Heinrichs Bradshaw: Thank you, Mr. Chair, members of the committee and guests. My name is Carla Heinrichs Bradshaw, and I'm a pharmacist-owner of a small medical pharmacy in Guelph. There has been an independent pharmacy at this location since the facility was built in 1965 and I have been affiliated with the store since I graduated from University of Toronto in 1981. My staff includes one of the previous owners, two dispensary technicians who have worked here for 27 and 13 years, and a few more recent additions to the group.

Some of my patients have been dealing with me for over 20 years. They trust me to provide them with the professional advice required to deal with their medication needs. They look to me for reassurance after they've been to their doctor that the therapy prescribed is reasonable and will not interact with their current meds. They will not choose an over-the-counter remedy without my involvement.

Then there are those people who come into the pharmacy, their loved one just discharged from hospital after a serious illness, and the caregiver now has to muddle their way through a raft of new prescriptions. We help it all make sense to them, perhaps distribute the drugs into a weekly dosette, so they no longer have to be anxious about that aspect of the care their beloved requires; or perhaps someone is returning home for palliative care, and we work together with the other health professionals to make the last weeks and days as comfortable as possible for the patient and less stressful for their families, locating and delivering medications as quickly as possible. I have a wonderful, professional and personal relationship with my patients, one that impacts positively on the health of them and their families.

If Bill 102 goes through in its current form, there will certainly be changes in my practice, the most drastic of which would be the closure of the pharmacy. Over the last 10 years, profits have slowly been bleeding away from the pharmacy business. Although it is accepted that it costs more than \$10 to provide a prescription to a patient, the ODB fee has remained stagnant for 15 years. The brand name drug companies have either quit selling pharmaceuticals to stores directly, which enabled us to save the wholesale upcharge, or they have increased their minimum orders required from a few hundred dollars to as much as \$3,000. This can mean four months' worth of product on my shelf—a heavy investment. Even if it is possible to buy drugs directly from a drug manufacturer, this does not necessarily mean that ODB pays any more than the actual cost of the drug, plus the \$6.54 fee, as many companies have increased their prices way above the cost of the drug, plus 10%, as listed in the ODB formulary. Naturally, all overhead costs such as rent, sal-

aries and delivery charges have increased as well, while we struggle to stay in business, having little or no say in our level of reimbursement.

Our business is unlike any other. We cannot promote our products to the public or put a slow-moving item on sale. Often, expensive drugs are brought into the store to fill a single prescription for a person in need, never to be used again, and instead of making any money filling that prescription we end up losing a lot more. To think that we are somehow making money hand over fist is simply erroneous.

If we had not been receiving rebates from the generic drug companies, pharmacies as they exist today would not have survived. The rebates are not some underhanded payola, but a necessary component of income required to keep pharmacies financially viable. There is provision in this bill for an increase in professional fee, and hopefully the price of brand name drugs is being addressed, but this does not compensate for the loss to our pharmacies due to the reduced markup from 10% to 8%, the upcharge loss due to generic price reduction, rebate loss due to generic drug price reduction and the elimination of generic rebates.

I have done a financial analysis of my business and the loss of the generic rebates, coupled with the other losses of income as described, will devastate my business. In the last fiscal year, my prescription sales were \$1,320,000 and my profit was \$105,000. I will gain \$4,600 due to the increase in professional fee from \$6.54 to \$7.00; however, I will lose \$2,400 due to the reduction in markup, \$6,700 due to the upcharge loss from generic drug price reduction, plus \$70,000 if the generic rebates are eliminated. This adds up to a grand loss of \$75,000—72% of my profit.

As you can well imagine, that loss will make my business unsustainable. Right now, I have a great relationship with the physicians who practise in the building where I am located. If there is a problem with the patient's therapy, I can go to the doctor's office, discuss the problem and solve it without making a sick person wait while phone calls are made and returned.

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However, if profit is reduced to \$30,000 on over \$1 million in sales, it makes little sense to keep the doors of the pharmacy open. I have little room to cut back on staff or hours of operation without compromising patient care, and the risks involved in running a business are too high for that kind of return on investment.

The closure of pharmacies such of mine will be a great loss to the care of patients. Do we want to send all patients, no matter how poorly they are feeling, across town to the stores selling milk and bread—as that will be the product mix required to sustain a business? There will be no neighbourhood pharmacy where we know you, your family, your medical history and your doctor.

I depend on the Ontario Pharmacists' Association to work with the government to resolve the issues relevant to Bill 102 and the business of pharmacy. OPA should be entrenched in Bill 102 as the exclusive representative of

pharmacists, and should be able to negotiate professional fees on our behalf. I urge you, the committee members, to focus on OPA's proposed amendments to the bill, because they solve problems pharmacies have identified.

Although all of these amendments proposed by OPA are important to pharmacy, dealing with rebates and professional allowances is critical to supporting our business. There should be a robust code of conduct to govern these practices. However, there should be no limit placed on the level of investment permitted. The regulatory process should be defined, and OPA fully engaged as a partner with the government in developing the regulations associated with Bill 102.

To date, the draft regulations, timeline and consultation plan are unknown. These regulations cover the dispensing fee and the reduction in the markup. As a result, OPA and its members have yet to establish a full sustainability evaluation of the impact of the regulations.

You have the power to make Bill 102 workable. Hopefully, you are beginning to understand that passing the bill as it stands now will be ruinous to pharmacies. The total revenue lost is not gravy to the owner, but meat and potatoes.

Allowing the generic companies to invest only in educational programs does not address the financial loss. If the goal of this government is improve health care, this is not the answer, as pharmacies will have to cut back on staff and business hours or simply close the doors.

We want to work with you to improve health care.

I, along with the Ontario Pharmacists' Association, remain committed to that goal, but it can only happen if pharmacies like mine remain sustainable businesses.

I ask that this committee move forward to accept and implement what OPA has presented as carefully considered and workable solutions that will fix this bill.

The Chair: Thank you, Ms. Bradshaw. We'll have about minute per side, beginning with the opposition.

Mr. Jackson: Carla, first of all, thank you. We've heard this story many times. I noticed that you're almost trembling when your business is about to be devastated.

As a long-time supporter of pharmacy, I want to apologize for this legislation even though we didn't construct it. It almost has made you out to be dishonest by taking rebates, when in fact government has been dishonest about your proper, fair professional fee and has allowed the rebates to allow you to operate. There's no hope of replacement here with the current legislation.

If no one has ever apologized to a pharmacist—I know I'm not the government but I feel badly for the attack on your profession. Thank you for being here.

The Chair: To the third party.

Ms. Martel: Thank you for being here today. We heard a presentation as a group this morning where everybody was going to make money off this whole little scenario: the generics, the community pharmacists, brand names, the whole nine yards.

You provided numbers to us, and they were pretty concrete, about the impact the bill will have on your pharmacy. Do you feel very confident about those num-

bers? You've had a look at what you can look at, because admittedly some of this is not very clear. But do you feel quite confident about the numbers you've put to the committee today in terms of how this bill will impact you? Is there anything else you'd like to add in terms of those particular numbers?

Ms. Heinrichs Bradshaw: I think they speak fairly well for themselves.

Ms. Martel: Thank you for being here.

The Chair: To the government side.

Mr. Peterson: Thank you very much for coming and taking your time away from your business. Contrary to what some other people in the room might say, we are trying to give the pharmacists the essential role they provide in health care, recognize that and move them forward as an essential part of the health care in Ontario. That's why we're trying to restore the rebate and stop the pricing increases from branded pharmacies. That's why we're looking at cognitive services as a way of rewarding you for all the extras you've been doing in the past. It's why we're asking for an increase in the dispensing fee, which no other government has done.

Our problem is that we've found a system that's broken and we're trying to fix it. That's also why we're talking now about—and we've ended the cap on the rebate at \$25 so you can handle the more expensive drugs, and we're looking at a professional or an educational allowance.

You mentioned the educational allowance. You thought that could make you a bit nervous because you have to actually expend the money. So you'd probably prefer that this be more of a professional rebate to keep this whole thing intact. But you are not the only person who has made this presentation. I do very much appreciate the numbers, because we have been accumulating numbers from pharmacies.

The Chair: Thank you, Ms. Bradshaw, for your presence and deputation on behalf of Westmount Pharmacy.

CANADIAN GENERIC PHARMACEUTICAL ASSOCIATION

The Chair: Now, on behalf of the committee, I invite our next presenter, Mr. Jim Keon, president of the Canadian Generic Pharmaceutical Association. Mr. Keon, as you've seen, you have 10 minutes in which to make your deputation, beginning now.

Mr. Jim Keon: Thank you, Mr. Chair. With me today is my colleague Jeff Connell, from the Canadian Generic Pharmaceutical Association. I am Jim Keon. I'm the president of the Canadian Generic Pharmaceutical Association. We are the association that represents on a national basis Canada's generic pharmaceutical industry.

Before commenting directly on Bill 102, I'd like to highlight three pieces of information that I think are important for you in your consideration of this bill:

First point: Generic drugs are equivalent, in terms of quality, safety and efficacy, to brand name drugs. Generic drugs are low-cost versions of brand name drugs that

are produced by several manufacturers once the patents expire on the brand name versions. Brand name drugs have 20 years of patent protection. During that time, only the patent holder can produce the drug. After that, other manufacturers can apply to Health Canada to produce the generics. There are no differences as far as quality, purity, effectiveness and safety between generic drugs and higher-priced brand name drugs.

All drugs sold in Canada must be approved by Health Canada. Each product must meet the strict regulations established by the Food and Drugs Act. Both generic and brand name drugs are subjected to the same rigorous standards. When applying to sell a generic equivalent of a brand name drug, the manufacturer must prove that the product is as safe and effective as the brand version. Generic manufacturers must also prove that the active ingredients in the medicine are as pure, dissolve at the same rate, and are absorbed in the same manner as the original product. Generics are used 57 million times a year in prescriptions in Ontario. They are safe drugs.

The second point I'd like to make: a few words about Ontario's generic pharmaceutical industry. Ontario is the proud recipient of one of the largest and most impressive clusters of generic drug companies in any jurisdiction in the world. The generic pharmaceutical industry employs some 7,500 Ontarians in well-paid, highly skilled jobs in its research, development and manufacturing facilities. Thirteen of our member companies are located in Ontario, many of them in the GTA.

The generic industry spends approximately \$300 million a year on research and development. One of our member companies, Apotex, is the largest R&D spender of any pharmaceutical company, brand or generic, in Canada each and every year. On average, our generic companies are spending close to 15% of their revenues on research and development. This is nearly twice the amount spent by the brand name companies, as reported by the Patented Medicine Prices Review Board. The reason for this is because unlike most brand name drugs which are shipped into Canada and Ontario, virtually all generic drugs sold in Canada are made in Canada, and the majority of those are made right here in Ontario.

The third point: health care savings from generic pharmaceuticals. Generics fill 45% of all prescriptions in Ontario yet represent only 17% of the costs. For the public sector, generics fill more than 50% of all prescriptions paid for by the Ontario government, yet account for only 20% of the \$3.5 billion spent by the province. Generics, on average, cost \$23 per prescription; brand name products, \$62 per prescription. These figures clearly demonstrate that generic drugs offer excellent value for money and play a key role in the affordability and ongoing sustainability of the system.

By increasing the use of lower-cost generic equivalents, there will be more money available for other priorities for our health care system, such as investing in pharmacy, hiring nurses, reducing waiting times and investing in new life-saving technologies, including new brand name pharmaceutical products. Saving money by

using generics is also a far better solution to reducing costs than cutting benefits or asking seniors and social assistance recipients to pay more for their prescription drugs. I'd ask you to keep all of those three points in mind as you consider changes to this bill.

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There are two broad issues we're going to address on Bill 102. The first is the interchangeability of generic pharmaceutical products. We believe that the generic industry, despite the benefits it brings to the system, can do more. Bill 102 takes a number of important steps in ensuring that the generic pharmaceutical industry can increase its contribution to health care in both the public and private sectors in this province and its significant investments in the Ontario economy.

We support Bill 102 and the government's efforts to bring greater transparency and cost savings to the operation of its drug benefit program. In particular, CGPA supports the announced initiatives to provide greater access to lower-cost generic drugs for those Ontarians not covered by the Ontario government's drug plan. It's called OFI.

Before I speak about OFI, we also support the changes made in the bill on the "same" and "similar" issue. The intent of these is to allow the government to designate products as interchangeable where there have been minor changes in the brand name product for the purposes of reducing competition from generics. A typical example is where a product has been changed from a capsule to a tablet: There is no difference in the product. This will allow the government to have its expert committee look at these drugs, and if they're determined to be the same or similar, then they can be determined to be interchangeable.

Off-formulary interchangeability: The second aspect of interchangeability in the package, more than \$30 million a year, will be brought in savings. This is bringing the Ontario jurisdiction in line with almost every other jurisdiction in North America. Currently, these rules penalize Ontario seniors and social assistance recipients who need these medicines that are not covered by the drug plan.

At the stakeholder briefing on April 13, when the government's proposals were announced, representatives of the Drug System Secretariat noted that every major employer group that provided comment during the consultations on the government's proposed changes asked for the government to implement off-formulary interchangeability.

I'd also like to reiterate that all the brand name drugs that would face competition in the Ontario private sector under OFI have already enjoyed the benefit of their 20-year patents. The patents have expired. It's time for Ontario employers and consumers to benefit from lower-priced competition from the generics.

This is an important point. There's absolutely nothing in Bill 102 that in any way erodes intellectual property protection for brand name drugs. Intellectual property protection is set by federal law and is based on inter-

national trade agreements. When brand name drug companies ask you to oppose the government's interchangeability proposals, they are asking that you force Ontario employers and consumers to pay for higher-priced brand name drugs even after patents have expired. They're asking you to do that rather than face the equivalent lower-cost generic competition.

The second main area, and the last area I will cover, relates to changes in generic pharmaceutical pricing and reimbursement. We support the government's desire for greater transparency in the drug reimbursement system. The Ontario government and, frankly, other governments in Canada and around the world believe that the reimbursement system for generic pharmaceutical products must be more transparent for taxpayers and patients.

There has been concern raised in the pharmacy sector, and we have listened to it, as you have, about the government's proposed ban on rebates and professional allowances in Bill 102. CGPA member companies understand the concerns of pharmacy with the proposed changes. Our companies also recognize the key role that pharmacists and the pharmacy sector play in the health care system. We are pleased to see that in Bill 102, pharmacists will be better recognized for more of the important services they provide to patients.

On the question of rebates and allowances, our industry needs clear rules. We also need to put in perspective our industry's ability to fund these payments. The generic pharmaceutical industry has only 17%, as measured by revenues, of the market share in Ontario. If the government proceeds with the major price decrease of approximately 20% for generic medicines that it has announced, then our revenue base will fall even more.

On the issue of pricing, I would note that several of our member companies came before you last week and argued that the committee should ask the government to maintain at least fair prices for generic medicines. I won't repeat those arguments, other than to say that there must be fair prices and some flexibility in reimbursement prices, particularly for some new, expensive products such as biopharmaceuticals. If prices are too low, generic companies will not be able to produce these medicines and provide savings to the health care system. However, it's clear, if generic prices are cut, that then it will not be financially possible for the Ontario generic industry to support pharmacy at the same level it does today. It would not make financial sense.

Clearly, the pharmacy sector is our partner. It is our goal to work with the government and pharmacy and wholesaler representatives to develop rules for generic reimbursement, including a new code of conduct for marketing practices, that will achieve the government's goal of transparency while also ensuring the long-term viability and sustainability of all players in the generic pharmaceutical value chain, including pharmacy and Ontario's generic pharmaceutical industry. Thank you.

The Chair: Thank you, Mr. Keon. I must commend you on the precision timing of your remarks and your

deputation on behalf of the Canadian Generic Pharmaceutical Association.

GLENDAMP CAMPBELL

The Chair: I would now, on behalf of the committee, invite our next presenter, Ms. Glenda Campbell, to come forward. As you've seen, Ms. Campbell, you have 10 minutes in which to make your combined presentation. I'd invite you to begin now.

Ms. Glenda Campbell: Mr. Chairman and committee members, thank you very much for allowing me the time to speak with you today. I'm Glenda Campbell and I'm a clinical consultant pharmacist working in the Hamilton area. I'm not sure you've heard from a consultant pharmacist yet in your presentations. I work for Medical Pharmacies, which is a pharmacy that has specialized in service to long-term-care facilities. I don't work in the pharmacy; I spend my full time in the long-term-care facilities, working with the nurses and with the physicians.

When I first started to work in long-term care—and I hate to admit it, it was back in the 1970s—our role was very limited. We audited their documentation, we checked their treatment cards, we did in-service teaching sessions to the nursing staff, and we attended their pharmacy and therapeutics committee.

Back then, physicians were not used to consultant pharmacists. I'm not sure that they trusted us. When we made recommendations it was very rare that they would even listen to us or follow through on recommendations for medication therapy change. I'm proud to say that consultant pharmacists today have earned the respect of the administrators, the nurses and, most importantly, the physicians we work with.

We're expected to work 24 hours a day, seven days a week. We're always on call. I'm always at the end of my cellphone. The company doesn't know it, but it's on even on vacations and holidays. Even in times of crisis, such as an influenza outbreak—and I think we've all heard of influenza—we're the first ones to get the call. We're the ones who go in and keep them on track. We've already pre-calculated their kidney function, we've already ordered the doses and suggested to the physician what's appropriate.

Today, while we continue to support the facilities with a formalized auditing program, it's really the change in our clinical support that's made a difference. Most of our time, we're in the facilities checking on medication for the residents and making recommendations. We've truly become an integral part of the health care system. Physicians now accept and expect us to review their charts and make recommendations. When I first started, at the end of a meeting with one physician, he said, "I thought as a pharmacist that you would ask me to add all these different medications," and that's not what we do. Most of the time, they're pleasantly surprised; we ask for medication to be discontinued, the dose to be reduced.

We're not trying to play doctors, but we can often recommend another medication that's more appropriate.

This is obviously a benefit to the residents, a benefit to the nurses who are giving out a lot of medications these days—it's a large part of their time—and a benefit for the government, which pays for them. Outside of our very specialized field, I don't think citizens or representatives of the government actually know we exist. Even our pharmacist colleagues don't know we exist. But we do provide a very unique service.

1740

While others have talked about improving care to seniors, we've made it happen with some innovative programs, and I'd like to mention a couple of them to you. When residents in facilities first started to receive a medication called Amantadine for influenza—I'm glad there are some physicians on the team here—the rate of discontinuing due to adverse effects, literature would tell you, was 20%; in practice, I actually found it to be a little bit more than that. Everyone received the same dose. Consultant pharmacists got involved. We calculated their kidney function and made recommendations to the physicians and recommended an appropriate dose. Personally, in my care facilities, if one or two people had to discontinue it because of adverse effects, that was unusual. We did a great job.

Residents in long-term-care facilities are also known to have poorer kidney function due to their age and their clinical conditions. Medications for many of these should be adjusted according to their dose. I work as part of a research team on my own time out of McMaster, and we've been kind of creative with some of the things we've done. We collected data from fellow consultants that represented over 14,000 patients in long-term care, and we showed how poor their kidney function was: over 40%, or under 40 mls per minute. Previous published studies, when we checked, were done with 50 people or less in this study. When this was published in November 2001, it had quite an impact on the level of knowledge. We received calls from across North America—Canada and the United States—especially from the colleges of pharmacy. We followed this up with a review of the top 100 medications that were dispensed in long-term care. We then narrowed it down through looking at literature to find the clinically evidence-based support. We now have 25 medications where we have an automatic computer review. This strongly supports our consultant pharmacists.

So what does this mean? It means that if you were in one of my care facilities as a resident and your doctor wrote a prescription order, that would go to the pharmacy and be keyed into the program. The computer would identify that you were taking one of these 25 medications. It would then go look in its memory bank and find out what we had already told it was your level of kidney function. If your kidney function was low, the computer automatically spits out an alert for the physician. If your kidney function is fine, it's just going to carry on.

If the medication happened to be an antibiotic, the pharmacist in that store would contact the physician that day before dispensing it. If it was another medication that wasn't quite as time-sensitive, that would come to my attention. I would take that into the care facility, check the chart, speak to the nursing staff and hopefully make an appropriate recommendation to the physician.

Also, we did a survey of long-term-care physicians, and they identified Warfarin as one of the drugs that's most challenging for them to prescribe. Warfarin, for you non-physicians, is a medication which is used to prevent blood clots from forming, which can go on to strokes. If you take too much of it, it can cause bleeding.

A recent review that we just finished in the fall: We went into five care facilities and we looked at all the residents who were receiving Warfarin. What we found was that they were in therapeutic range only 54% of the time. That really is not good enough. If that was my mother or father in there and that was their percentage, I'd be really upset.

So what we're doing about this right now: As a tool, there's a new meter that's out. We're trialling that this month in a care facility. And we should have the INR results within 60 seconds, or the blood results, rather than sending that out to a lab and waiting for the time for it to come back. We're going to follow this up with implementation of a web-based resource. This way, the nursing staff in the care facilities can go into the computer and find out what the appropriate recommendations are and pass those on to the physician, or the physician will be able to access this program from their office. Using an algorithm, we can help the physicians with what the appropriate dose is. Studies have shown that by using an algorithm, we can get this up into 80%. Eighty per cent of the time, those patients will be in therapeutic range.

With additional government support—which is probably not going to happen right now—we can do a lot more and be more creative. Because of my concern that funding changes with Bill 102 might result in long-term-care pharmacies such as the one I work for having to cut back on consultant time in the facility, I asked one of the directors of care whom I work with, Jim Millington, in Beamsville, how he would feel about this. He answered, "You as a consultant pharmacist are the radar that identifies and teaches us how to keep current with best practices of care. We simply do not have the staff or the expertise to do that. We have to depend on you." I can add to that that with the current physician shortage, it's very, very difficult to get physicians to look at long-term care. Then, when they consider some of the extra paperwork they have to do and the workload, these gentlemen and ladies are so stressed that they don't have time to do the extras for the clinical review of charts like we can do to help back them up.

I ask you to ensure that if you or your family members happen to be in long-term care, I, along with my fellow consultants, will be there for you, so we can continue to be a member of the health care team and provide the best of best practice care. This will require that pharmacies

we work for receive at least the same funding to dispense a prescription as a regular retail pharmacy would for their client. We provide so much more for this dispensing fee.

I'd like to thank the team who worked to put Bill 102 together. I recognize the time that you've given to the review of section 8 and limited-use drugs, and as a previous speaker said, they have really been very difficult for physicians to handle.

Thank you for understanding these issues, and hopefully, I've given you some insight as to what a clinical consultant pharmacist is.

The Chair: On behalf of the committee, thank you, Ms. Campbell, for your deputation and your written submission.

Interjections.

The Chair: From what we can determine, Parliament has adjourned for the day, probably in view of the lovely weather; we're not entirely sure. If there is a vote, the committee will adjourn for that vote, and I would respectfully ask you to return immediately. But apparently, it's adjourned. Fine. No vote.

SOBEYS PHARMACY GROUP

The Chair: Let's move to the next presenter, Ms. Sandra Aylward, division vice-president of Sobeys Pharmacy Group, and colleague. As you've seen, you have 10 minutes in which to make your deputation. Welcome. Please do introduce yourselves for the purposes of recording. Please begin.

Ms. Sandra Aylward: Thank you. Good afternoon. My name is Sandra Aylward. I'm division vice-president of professional and regulatory affairs with Sobeys Pharmacy Group. With me today is Kevin Comeau, director of operations for Sobeys Pharmacy Group in Ontario. I am a pharmacist, currently licensed in the province of Nova Scotia. I'm a member of the Ontario Pharmacists' Association and the Canadian Pharmacists Association.

Sobeys Pharmacy Group is a national operating division of Sobeys, a grocery retailer with hundreds of locations across Canada. In Ontario, Sobeys Pharmacy Group owns and operates 29 pharmacies as of today, with over 100 people employed, including pharmacists, technicians and other support staff. These pharmacies are part of a growing network of approximately 170 pharmacies across the country in both grocery store and traditional drugstore formats.

Sobeys pharmacy has been operating in Ontario since 2001, so we are relative newcomers to this province. Although we are part of a larger corporation, our pharmacies operate as separate business units within the grocery store.

On that note, let me say that I was very surprised by the comments of Mr. D'Cruz this morning. I've never met Mr. D'Cruz, although I've been working in community pharmacy for over 20 years. I'm not aware that he is a pharmacist, I'm not aware that he's ever operated a pharmacy, and I can tell you that his rosy picture of

community pharmacy does not match our operational reality. I simply don't know where he got his numbers.

We see that the need for pharmacy services in Ontario and elsewhere is growing, as drug treatment, as you've heard, offers improved health outcomes and quality of life for many, especially as the population ages and deals with health issues that often result. Our pharmacists and pharmacies contribute to the overall capacity in the health care system to respond to primary health care issues on an everyday basis. Our pharmacists and pharmacies build on a long history of public service by our profession in delivering front-line health care in Ontario. We have found that people in Ontario trust their pharmacists and value the very real and practical help they provide on a daily basis all over this province.

1750

Based on the experiences of our pharmacists, I agree with the Minister of Health that there are opportunities to improve the drug system in Ontario. I appreciate that one of the goals of Bill 102 is to address the fact that the system within which pharmacists operate in order to deliver medications and services to the citizens of Ontario is at times very convoluted, with various elements from times long past and the resulting necessity for workarounds—complicated processes that pharmacists, physicians, patients and government administrators must employ to fulfill our goal of getting people the medications they need.

Let me give you an example of what I mean. I'm sure that this week you've heard about a phenomenon known as cost-to-operator claims. Simply put—if it's possible—the price that the Ontario government will reimburse to pharmacies for many drugs is lower than what the pharmacy can buy the drug for. If a pharmacy wishes to be reimbursed for the full and actual cost they incur to purchase the drug, the pharmacy must submit a cost-to-operator claim, a separate administrative process on top of the basic claim to the drug plan. Their reward for this? The difference in price between the government's outdated price list and the real cost of the medication can be paid to the pharmacy, but then it is subtracted from the pharmacy's markup, an element of the reimbursement model which is intended to cover other costs associated with providing the drug to the patient. Because the pharmacist must perform this extra step—this work-around—to be paid the actual cost of the drug and because the pharmacy loses that amount anyway in a bizarre example of giving with one hand and taking away with the other, I can understand why some pharmacies don't bother submitting cost-to-operator claims. We estimate that these situations cost our pharmacies hundreds of dollars per day in inadequate reimbursement, lost productivity or both.

Sobeys Pharmacy Group is committed to growing our network of pharmacies in Ontario. We have plans to expand by at least six pharmacies in this fiscal year. Our business model includes large investments in human resources and other infrastructure in order to deliver much more than basic prescription services. Our pharmacists

and their front-line teams are building on a solid foundation of pharmacist training, tools and programs with the operational support to deliver what patients need and want to a very high professional standard. For example, in the last 18 months, our Ontario pharmacists have reviewed and updated our privacy standards as part of a national Sobeys pharmacy program that the Privacy Commissioner of Canada has called "exemplary" and "a model for best practice." Our pharmacists have undergone training and implemented new operational standards to improve medication safety. I'm proud to have been part of that. They've been trained to provide emergency contraception as a primary health care service. In the next six months, we have plans for the launch of our Diabetes Care in Action initiative in Ontario, including pharmacist training and certification and the launch of practical tools for people affected by diabetes to better manage their health.

Bill 102, as it has been presented, means that we will need to re-evaluate our business model in Ontario. As corporate employees, our pharmacists' focus is on providing care to their patients. They trust Sobeys Pharmacy Group to make sure that our business is financially viable so they can continue and improve upon the services they provide to their patients every day. They know that allowances from manufacturers are part of our business model. They know that these allowances are legal, ethical and, like everything else in our supplier relationships, subject to the Sobeys code of business conduct. They're concerned about Bill 102. They are naturally excited, as am I, about the minister's stated intention to recognize their role as medication advisers by funding activities such as individualized medication consultations. However, our pharmacists know first-hand how much time, effort and cost is involved in delivering our current level of pharmacy service, and they realize that reimbursement from the Ontario government and other payers has never been sufficient to cover these costs. They wonder how we'll find the resources to offer the certification program and the full-day training that we plan for them on diabetes care. They hope that we will be able to continue to offer wellness clinics in our stores. If the changes in Bill 102 are enacted without amendments, our company will need to assess the sustainability of continuing activities for which there is cost but no funding.

We will do everything we can to maintain and, if possible, improve what we offer the citizens of Ontario. However, we are responsible business operators and, as such, we will need to make changes if Bill 102 means that our business model no longer works.

What's needed? We need amendments to Bill 102, followed by careful crafting of appropriate regulations and policies to effect what I believe this government intended when it introduced the bill—a more transparent, more efficient drug distribution system as part of a regulatory and commercial environment that allows pharmacists and pharmacies to continue to meet the needs and, yes, even raise the bar in terms of what we offer.

We support amendments to Bill 102 that create a transparent process through which pharmacies can access professional allowances that support the development of patient services, including the operational support needed to deliver those services.

We support amendments to Bill 102 that clarify the government's intentions with regard to interchangeability of drugs. If the government's position on this is not clear to us as pharmacists, the medication experts, it's sure going to be difficult for us to implement the changes and explain them to the public.

We support amendments to Bill 102 to establish the proposed Pharmacy Council in law. It's critical that the government have, in its infrastructure, access to expertise from pharmacy operators when developing policy in this area. One simple example is that the minister has expressed an intention to negotiate prices with drug manufacturers so that pharmacies will not pay more than the government-established price. We need to discuss what happens if and when the minister is unable to deliver on this guarantee, with the potential result that pharmacists and patients are once again left with the financial consequences. The Pharmacy Council is the place where these discussions can take place so that the system works for the people of Ontario.

I am happy to see indications that the minister and this government are prepared to listen and respond to the feedback that pharmacists are providing on this bill. In that respect, the work of this committee is incredibly important. We thank you for the opportunity to speak with you today.

The Chair: Thank you, Ms. Aylward and to your colleague, for your deputation on behalf of Sobeys Pharmacy Group.

ONTARIO AIDS NETWORK

The Chair: I would now call on behalf of the committee our next presenter, Mr. Ron Lirette of the Ontario AIDS Network, joined by his colleague Ms. Patti Bregman, legal counsel. As you've seen the protocol, you have 10 minutes in which to make your deputation, and I would invite you to begin now.

Mr. Ron Lirette: We appreciate the opportunity to appear before the committee on an issue very important to people living with HIV/AIDS.

The Ontario AIDS Network is a province-wide organization. It has more than 30 members, including AIDS service organizations and provincial organizations working with various constituencies. We have attached a brochure describing our organization for your perusal.

Last week marked the 25th anniversary of the pronouncement by the Centres for Disease Control that five gay men were infected with an unusual cancer, which turned out to be AIDS. At meetings held around the world last week, including the United Nations, there were two areas of focus: prevention and medication.

In 1984, people diagnosed with HIV/AIDS had little chance of survival. The advent of AZT, followed by the

HAART or HIV/AIDS antiretroviral treatment, has dramatically changed the outlook for many people with HIV/AIDS, although it remains a fatal disease.

Unfortunately, however, the disease is once again on the increase in Ontario. Recent statistics show that the number of women and heterosexuals considered to be at high risk are growing quickly. This means that the number of people in Ontario relying on access to the most effective drugs will continue to grow. A summary of recent statistics produced by Dr. Robert Remis and his colleagues, along with an executive summary of his report, will be forwarded to you tomorrow to your clerk. Unfortunately, we don't have it available with us today.

This legislation is timely. Drugs remain the link between life and death for people with HIV/AIDS. We know that drugs that work today may lose their effectiveness, requiring the development of newer and more effective drugs. This, in turn, will result in an increased cost for government and private health insurance plans. The government's goals with respect to this legislation are consistent with our priorities: ensuring that affordable drugs are available and that they are covered under the Ontario drug benefit plan. Although not covered by this legislation, we hope that this legislation will also help manage the rate of increase for drug costs overall. Many people with HIV are working and depend on private insurance to cover the cost of drugs. We are concerned that, with the rapid increase in the cost of drugs in Canada, employers will stop providing coverage or increase the amount of employee contribution.

1800

In this submission, we want to focus on three areas: the restructuring and accountability of the executive officer; the process for designating drugs for the formulary as interchangeable and for special use; and the involvement of people who rely on medications on the Drug Quality and Therapeutics Committee and on a new Citizens' Council.

In announcing the legislation, the rationale for restructuring the drug programs branch was to improve the efficiency of the program, particularly following concerns raised by the Provincial Auditor. In principle, we support the changes that will improve the effectiveness of the program in a cost-effective way. Changes that will reduce the length of time in which a drug is added to the formulary, designated as interchangeable or approved for special use is positive.

We are concerned, however, that the legislation gives the executive officer sweeping authority over billions of dollars and the lives of millions of Ontarians without any clear accountability or transparency beyond the obligation to explain decisions not to approve a drug for the formulary. Under the existing legislation, various stakeholders could challenge decisions. Under the new legislation, only the manufacturers have that right.

There is nothing in legislation that describes the relationship between the executive officer, the minister and cabinet. In response to questions, the ministry officials have compared the executive officer to the general man-

ager of OHIP, who also manages a multi-billion dollar budget. The difference is that the general manager does not have the authority to enter into contracts with health practitioners nor determine which services are covered. The only reference to terms and conditions under which the executive officer will act is with respect to regulations that may be passed.

It is our position that a balance can be struck between a more streamlined process while retaining accountability if the legislation were amended as follows:

(1) that the regulations setting out the qualifications, process for hiring, and dismissing the executive officer and the lines of accountability be mandated rather than discretionary;

(2) that the regulations require cabinet approval of contracts over a specific amount so that the government retains accountability for these expenditures;

(3) that the regulations be subject to public consultation prior to enactment or change. This gives the public an opportunity to have real input into the process.

There are three important decisions that are assigned to the sole discretion of the executive officer: designating drugs as interchangeable; deciding which drugs are on the formulary; and deciding on processes for conditional and special-use drugs. All three of these areas are of particular importance to people with HIV/AIDS. In the early years of the epidemic, we were forced to lobby hard to get coverage for drugs which allowed people to extend their lives. As HIV evolves and becomes resistant to current drugs, we anticipate that there will be new drugs, some of which may be experimental in nature, all of which will likely be expensive.

Having citizen representatives on the DQTC is useful, but with only two representatives, they are unlikely to be familiar with the wide range of health conditions for which drugs are approved. As we said above, we are concerned with transparency. The legislation requires the executive officer to provide reasons for his or her decisions, but that requirement is limited.

We understand the government's decision to move authority from the minister to a senior bureaucrat to make the process more efficient. However, without changes to the legislation, we are concerned that the process will in fact become even more closed, with only limited information available. In order to address these concerns, we recommend:

—That the executive officer be limited in the criteria that can be used to withhold information on decisions. In order to be consistent, we suggest using the criteria under the Freedom of Information and Protection of Privacy Act, which would apply in any event. Allowing the withholding of information beyond that permitted by FIPPA would be a step backward in terms of transparency.

—That there should be a period for public consultation on decisions about drug interchangeability and whether or not a drug should be on the formulary. This approach would be less time-consuming than the regulation-making process but would still allow for public comment. This could occur by placing notices in specific publica-

tions or on the Internet giving people an opportunity to make comment. It would not only make the process more open, but would ensure that the executive officer had access to the full range of information.

—Where a request for a special-use or conditional drug is denied, that there be an appeal process to review the decision. One possibility would be to use the existing health service appeal tribunal. Given the impact that a refusal has on the potential life and health of the person applying, it is reasonable to provide some opportunity to have the matter reviewed. This recommendation would allow the review to occur without the cost of setting up an entirely new process.

In terms of interchangeability, we agree with the concerns raised by the AIDS Canadian Treatment Action Council and other HIV/AIDS organizations.

We are pleased that the government has acknowledged the important role that citizens and those who rely on medications can play. Since the early days, HIV/AIDS organizations have been strong supporters of full participation of people with HIV and AIDS in all aspects of decision-making about treatment. That is reflected in the successful Canadian AIDS Treatment Information Exchange, which recently celebrated its 10th anniversary. CATIE represents the benefit that comes from collaboration between professionals and those who use the services.

We are, however, concerned that none of the citizen participation proposals are included in the legislation itself. Without a statutory mandate, an advisory council can be easily eliminated or disregarded. It also makes the council itself less accountable.

The Chair: With apologies, Mr. Lirette, I will have to intervene. On behalf of the committee, I would like to thank you for your deputation and written submission on behalf of the Ontario AIDS Network.

McKESSON CANADA

The Chair: I would now like to efficiently call before the committee our very last presenter of these hearings—I believe our 100th or so presenter, after having received several hundred written submissions as well—Mr. Joe Varkul, vice-president for Ontario of McKesson Canada, and colleague. I remind you, gentlemen, you have 10 minutes in which to make your combined deputation. Please identify yourselves for the purposes of the permanent record here at Hansard. Please begin.

Mr. Joe Varkul: Thank you, Mr. Chair and members of the committee. My name is Joe Varkul. I'm the vice-president and general manager for Ontario of McKesson Canada. With me is Anthony Leong, our director of new business development.

McKesson Canada is the leading provider of logistics within the Canadian health care marketplace. In Ontario we operate five distribution centres which provide employment for 900 local residents. McKesson Canada's Ontario operations offer same-day and next-day deliveries of 35,000 products from 800 manufacturers to 2,400

pharmacies and 250 hospitals and institutions. Our geographical coverage includes 403 pharmacies in the most remote areas of the province, ensuring that patients receive their prescribed therapy in a timely manner no matter where they live. In Ontario last year, our company provided logistics for over \$2 billion worth of pharmaceutical products.

We are the gears in the machine. We are the wholesaler and the transporter. We add no cost to government. While patients don't see us or even know about us, we play a vital role in making drug access and distribution possible.

Like everyone, we have watched the costs of the Ontario drug benefit program grow rapidly over the last number of years. We have watched the work of the drug secretariat and have tried to have input wherever possible into the process.

1810

Unfortunately, our company and indeed our industry would suffer great collateral damage, however unintentionally, by the contents of this bill if it is passed and tabled without amendments. In this regard, I would like to draw your attention to four specific issues.

Number one, in the government's effort to curtail the rebates paid by generic drug manufacturers to pharmacists, we may be caught in the definition of what constitutes a rebate. We purchase generic drugs from the manufacturers and sell them to retail pharmacies at the same price. We are compensated by the manufacturers with a distribution allowance that is based on a small percentage of the value of their goods that we handle. The distribution allowance paid to us is for a service rendered. It is not an incentive for us to alter our commercial practices. It does not result in higher drug prices. It allows the pharmacist to make the full allowable markup, currently at 10%. Therefore, we are asking the committee to amend the bill to exempt distribution fees paid to wholesalers from the definition of a rebate.

Our second issue is the proposed price reductions in the bill and their timing. Our own analysis is that a 20% price reduction in generic drugs will have an immediate negative impact of \$6 million on us. The proposed roll-back on brand name pharmaceuticals would have a \$1-million negative impact. In total, this \$7 million represents a significant impact on our approximately 1% operating margin, the loss of which would require us to reduce our workforce, initiate layoffs and begin service reductions soon after the bill's implementation.

Therefore, we propose that a phased-in, transitional approach be taken, commencing only with new generic drugs that are added to the formulary. Similarly, the current prices of branded pharmaceuticals listed in the ODB formulary could be accepted as the new book price and unauthorized price increases could be restricted on a go-forward basis. This approach would give all businesses impacted by Bill 102 time to adapt and reduce the need for widespread inventory cost adjustments throughout the entire pharmaceutical supply chain.

Thirdly, though the financial transactions between manufacturers and pharmacists have little bearing on our company, it has a number of indirect impacts, particularly with respect to the economic sustainability of retail pharmacy. We certainly endorse a transparent system regarding professional allowances. However, we believe that imposing a cap on these allowances would not result in any savings to the government and would only serve to foster an underground economy similar to what a neighbouring province experienced when it implemented a similar measure. Furthermore, the combination of limitations on professional allowances and the multiplying effect of generic price reductions would have a dramatic impact on the economic viability of retail pharmacy, particularly the smaller independents. As of this moment, we have \$90 million in credit extended to independent pharmacies in Ontario. Their financial health is important to us.

We suggest that the bill or the forthcoming regulations be amended to establish a transparent system for professional allowances with no limits on the amounts paid. If the government finds that these allowances become excessive in the future, they could exercise their power in establishing new ceilings for generic prices.

Our final issue deals with our role in the system. For many years now, Ontario has been the only province in which traditional and accredited wholesalers, such as McKesson Canada, are not recognized for the value they bring in terms of consolidated supply, cost savings and timely access to pharmaceuticals. Other provinces utilize a pharmacist reimbursement model based on actual acquisition cost, or AAC, which ensures that pharmacists are reimbursed 100% for the cost of the drugs they acquire, including the wholesaler markup. This system greatly simplifies the ordering and inventory management process for pharmacists. We would like to see an earnest and ongoing effort that would investigate and make recommendations on the feasibility of an AAC-based reimbursement model, which would recognize the value that traditional and accredited wholesalers provide without negatively impacting the reimbursement that the pharmacists receive. As Ontario's largest pharmaceutical wholesaler, we would appreciate the opportunity to be consulted as part of this process.

In conclusion, we recognize and support what the government is trying to accomplish, and we think we can help. However, if our recommendations are not taken into account, we would suffer large collateral damage and would have to reduce our operations and services to customers and, ultimately, to patients. We have been in this business in this province and this country for 100 years, and would like to be here for another 100.

The Chair: Thank you very much, Mr. Varkul. We'll have about a minute per side, beginning with the government.

Mr. Peterson: Thank you for making the submission. I was a businessman in the distribution business in several areas—clothing, electronics and hardware products—and I've never seen a system as efficient as yours

that operates on such low margins. We take to heart what you're talking about.

One of the biggest problems we had in reforming the drug act was how to figure out where the rebates were coming and these price increases were going through you. This must be a dog's breakfast in terms of keeping your computer pricing in check and on track, and making sure that you're not leaving money on the table when you operate on such margins. Is there a better way for us to work through the pricing, the price increases and the fixing of the prices?

Mr. Varkul: Our recommendation, as I've said here, would be that prices as they are today should be left in place and should be recognized; that the reduction in prices should apply to future listed generic drugs; and that the current brand drug pricing should be frozen and only allowed to increase with your permission.

The Chair: Thank you, Mr. Peterson. We'll move to the opposition side.

Mr. Jackson: We've heard from some who've complained that wholesaling upcharges take away a significant portion of the pharmacists' allowable markup. That could be 5.6% versus 8%. Could you help me understand that a little bit better?

Mr. Varkul: Sure. Essentially, the business is divided into two. As you've heard today, generic prescriptions make up about 50% of the total number of prescriptions, in addition to which we get a fee for service from the generic manufacturers. So on the generic side, there is no markup from the wholesaler, and the pharmacist is not impacted in any way. They get their current 10% in full.

The issue arises on the brand side. On the brand side, McKesson generally upcharges and invoices at 5.5%. However, by the time the pharmacy pays us and has received their cash discounts and allowances, our selling margin, as it were, would be somewhere in the twos.

Mr. Jackson: You're formerly Drug Trading or like Drug Trading?

Mr. Varkul: We're formerly National Drug. Some years ago, we actually purchased the distribution assets of Drug Trading as well.

Mr. Jackson: That's what I thought. Thank you.

The Chair: Thank you, Mr. Jackson. To the third party.

Ms. Martel: Thank you very much for your contribution here late in the day.

Just let me go back. The effect, then, in terms of the markup is that if a very significant portion of a pharmacy's drugs are brand name versus generic or ODB, then they could be really impacted by that change in markup from 10% to 8%.

Mr. Varkul: It's not my position to comment on that—

Ms. Martel: I understand that, but you work with them.

Mr. Varkul: —except that the price increases which were not recognized before were being deducted from the 10%. My understanding would be that today these price increases or current prices would be recognized, so there would be no loss from the price difference between the formulary and the manufacturer's selling price.

Ms. Martel: It's going to depend on if that's clarified in the bill—because I don't think it's as clear in the bill as you've outlined at all—whether the markup is off the wholesale price or not.

Mr. Varkul: Absolutely.

The Chair: Thank you, Ms. Martel. On behalf of the committee, I would like to thank you, Mr. Varkul and Mr. Leong, for your deputation on behalf of McKesson Canada, which is, as I've mentioned, the final external hearing we'll be having on this particular bill.

If there is no further business before the committee, I declare that we are adjourned in this room until after question period, at approximately 3:30 p.m., for clause-by-clause consideration.

The committee adjourned at 1818.

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Also taking part / Autres participants et participantes

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Clerk / Greffier

Mr. Trevor Day

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Official Report of Debates (Hansard)

Tuesday 6 June 2006

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Standing committee on social policy

Transparent Drug System
for Patients Act, 2006

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de médicaments transparent
pour les patients

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 6 June 2006

Mardi 6 juin 2006

*The committee met at 1551 in committee room 1.*TRANSPARENT DRUG SYSTEM
FOR PATIENTS ACT, 2006LOI DE 2006 SUR UN RÉGIME
DE MÉDICAMENTS TRANSPARENT
POUR LES PATIENTS

Consideration of Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act / Projet de loi 102, Loi modifiant la Loi sur l'interchangeabilité des médicaments et les honoraires de préparation et la Loi sur le régime de médicaments de l'Ontario.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, fellow members of the committee and all observers, I welcome you. As you know, we're here for clause-by-clause consideration of Bill 102, An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act.

For the information of all those who are listening, I would like to just remind all of us collectively of an order of the House that was passed on the evening of Tuesday, May 9, 2006, that says, approximately, that at 5 p.m. those amendments which have not been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and, without further debate or amendment, put every question necessary to dispose of all remaining sections.

Practically speaking, what that means is we'll have approximately till 5 o'clock to propose individual amendments and to have questions and comments on those particular amendments. At 5 p.m., the amendments will not be read into the record, but we'll proceed immediately to a vote.

I'll also advise members of the committee that any request for a recorded vote that occurs after 5 o'clock will be deferred to the end of all consideration. For example, if we ask on, say, motions 141, 142, 143 for recorded votes, they will be looped to the very end.

I will also remind members of the committee respectfully that if we have not completed our voting deliberations after 5 o'clock up until 12:01 a.m. of the next day, this bill will nevertheless still have been deemed to have been dealt with and will be reported back to the House. If there's any clarification required, we have the powers that be here to advise us.

I will now invite our first motion, NDP motion—yes, Mr. Jackson.

Mr. Cameron Jackson (Burlington): On a point of order, Mr. Chair: I feel compelled to raise for the record the difficulty and the inappropriateness of how the committee finds itself. Exactly one hour ago, I received 177 amendments. In fact, they were hot to hold onto. They'd just come off the photocopier machine. In my 22 years here, I've never seen a committee operate in this fashion.

You are the Chair of the committee and you are guided by the House rules, but to have these many amendments thrown at us—I was barely able to read most of them in the one hour that I had as a member of this committee. For the record, this is a most inappropriate way for us to be conducting the important business on a \$3.5-billion portfolio where deputants have said their future livelihood is at risk.

I will leave my comments at that, but I cannot underscore just how bad this is for the way we are to conduct the business of government for the citizens of Ontario.

The Chair: Thank you, Mr. Jackson. I thank you for your comments. I do point out, as I'm advised, that it is not a valid point of order, but we accept your comments nevertheless.

I will now, unless there's any further business—

Ms. Shelley Martel (Nickel Belt): Yes, there is.

The Chair: I invite Ms. Martel of the third party for NDP motion 1.

Ms. Martel: On the same point: I understand you think it's not in order; however, I must also agree with Mr. Jackson. I am dismayed by this process. I don't think it does any of us any good to be trying to operate like this. This is how serious mistakes get made, and I really regret that the government—and I'm not blaming the members who are here—that the powers that be decided to do a rush job on a bill like this, and that we are stuck in this position today.

The Chair: Thank you, Ms. Martel, for your comments. I offer you the floor for NDP motion 1.

Ms. Martel: I move that, in the definitions in section 1 of the Drug Interchangeability and Dispensing Fee Act being made by section 1 of the bill,

(a) the definition of "executive officer" be struck out; and

(b) in all other cases where "executive officer" appears, it be struck out and "director of the drug program branch" be substituted.

The Chair: Thank you. The floor is open for questions and comments, if any.

Ms. Martel: I am moving this amendment because during my debate on second reading and during the course of these public hearings, I have made it clear that New Democrats are opposed to having an executive director who is appointed by order in council to assume many of the new conditions, new mandates etc. that are outlined in section 8. The government has, during the course of the debate, tried to say that this is a model that was adopted from OHIP, and I have to say that that is not correct. The folks who work at OHIP, as far as I understand, are all there as bureaucrats. I don't think there is a general director or manager or anybody else who works at OHIP who is appointed by the government through an order in council and carries out their business under an appointment process. That's the first thing.

The second thing is that there isn't anyone at OHIP, any bureaucrat, who has the kind of powers that are being exercised by the executive officer in this particular bill. I note that no one at OHIP has the sole authority to decide what will be in the OHIP schedule of benefits or what will be taken out of the OHIP schedule of benefits, yet in this bill we will have an executive director who is not elected and is appointed by the government making fundamental decisions about what is delisted, what is listed, what's on the formulary, and the broad scope and broad range of other functions and powers that will be assigned to whoever this person is.

Within the Ministry of Health now there is already a drug program branch; there is already a director of the drug program branch. That individual is a bureaucrat, that individual is accountable back to the ministry, and that is the way it should be.

So I remain extremely concerned and extremely opposed to the creation of a new position of someone who will not be accountable in any way, shape or form and who will have broad powers and a broad mandate that goes much further than anything that is currently going on at OHIP. It is not even a valid comparison.

Throughout the course of our amendments, you will see that our decision is that the director of the drug program branch should be the one who undertakes some of these functions. Not only should that individual be the one to undertake some of these functions, but there should continue to be checks and balances with respect to regulations that have to be passed by cabinet so that another set of eyes—government eyes, people who are accountable, people who can be elected or unelected—will be the final decision-makers with respect to some of the important decisions that will be made here. This type of accountability is not apparent in the bill as it currently stands, and the amendments that we move do both things: (1) bring it back to a bureaucrat, a position that is already in the ministry that should be utilized in a better fashion; but, just as importantly, (2) bring it back so that there are checks and balances so that major decisions that have to be made with respect to listing of drugs, delisting of drugs etc. will still be done by regulation so that cabinet

will still have to have the final say and be accountable in that way to the public of Ontario.

The Chair: Is there any further debate or questions and comments?

Before proceeding to the vote, I'd just advise all members of the committee that should any questions arise, we do have a number of staff members available from the Ministry of Health and Long-Term Care.

We'll proceed immediately to the vote.

Ms. Martel: A recorded vote, please, Chair.

Ayes

Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 1 to have been lost. I offer the floor now to Ms. Martel for NDP motion 2.

Ms. Martel: I move that section 1 of the bill be amended by adding the following subsection:

"(3) Section 1 of the act is amended by adding the following subsection:

"Public interest

"(1.1) In this act, the public interest includes interest in,

"(a) timely access to local health care;

"(b) continuity of health care;

"(c) quality care and treatment of individuals;

"(d) quality management and administration by health service providers;

"(e) efficient and effective management and delivery of health services; and

"(f) maximized patient ability to make choices about his or her own health care."

1600

The Chair: Thank you, Ms. Martel. The floor is yours if you'd like to make any further comments.

Ms. Martel: There is no definition of "public interest" in the bill, but in at least four sections, perhaps five, the executive officer is authorized to make decisions in the public interest. This includes: (1) requirements for interchangeability of products; (2) the ceasing of those products to be interchangeable; (3) decisions about listing of drug products; and (4) decisions about delisting of drug products. In all of those cases, the executive officer, in the bill as it stands now, is authorized to do that in the public interest. There is no definition of public interest in the bill, as I understand it. I would think that when an individual is being given that kind of responsibility, there should be some criteria around which those kinds of decisions are made. I have put forward a definition of public interest so that there would be some context and criteria within which the executive director should make some of those decisions.

The Chair: Any further debate? Questions and comments? If not, we'll proceed to the vote.

Ms. Martel: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 2 to have been defeated.

The floor is now the government side's, Mr. Fonseca.

Mr. Peter Fonseca (Mississauga East): I move that section 1 of the bill be amended by adding the following subsection:

"(3) Section 1 of the act is amended by adding the following subsection:

"No therapeutic substitution

"(2) Nothing in this act shall be construed to permit therapeutic substitution."

The Chair: Are there any further comments from the government side on that particular motion? Seeing none, Mr. Jackson.

Mr. Jackson: I'm at a loss to understand why we would put this in here, because it simply says that while you're reading this act and while you're interpreting this act, nothing in this act deals with the issue of therapeutic substitution. What it doesn't address is the issue that the government promised to address, that there would be no therapeutic substitution, so we're left to believe that it might surface in the regs. But my legal training tells me that you can't construe anything in here to say that it will permit it. That doesn't mean it won't permit it; it just means you can't read the legislation to say it can be construed that way. This is the most unusual wording I have ever seen for this kind of legislation. I'll put it into a question now that I've made the statement: Why is the government unable to make a clear and unequivocal statement that there shall be no therapeutic substitutions?

The Chair: Is there any reply from any quarter?

Mr. Khalil Ramal (London-Fanshawe): Mr. Jackson, you have been in the committee. We have listened to the presenters who came, a variety of stakeholders. They voiced their concern about this specific issue. That's why this came, to clarify it. It's not being permitted.

Mr. Jackson: No, it doesn't say that. It says, "Nothing in this act shall be construed to permit therapeutic substitution," which means it's not permitted, or it is permitted, but nothing in the act will construe you to interpret it one way or the other. It's the concept of construing something to understand it. It doesn't compel the government not to bring it in; that's not what this says. I'm not going to argue legal semantics with you, but if you think this one has pulled the wool over anybody's eyes, it hasn't.

I don't wish to make it a debate. I've put my concern on the record. I've been given a response.

The Chair: If there's any other reply, question or comment from the—

Mr. Tim Peterson (Mississauga South): Can we refer this question to the staff, please?

The Chair: Ministry staff, as you know, please identify yourselves for the purposes of recording.

Mr. Liam Scott: Liam Scott, legal counsel with the Ministry of Health and Long-Term Care. The purpose of this provision is to make it clear that none of the provisions in the Drug Interchangeability and Dispensing Fee Act permit therapeutic substitution. That is the purpose of the clause. It's intended as a clarification. None of the other provisions in that legislation permit therapeutic substitution.

Mr. Jackson: Liam, I am correct, though, that that doesn't prevent it from surfacing in any regulations that might flow at some future time.

Mr. Scott: Wherever a regulation conflicts with a statute, it's a generally known legal principle that the regulation cannot prevail over the statute. So I would say, no, a regulation could not provide for something that would permit therapeutic substitution where the statute expressly stated this.

The Chair: Thank you, Mr. Jackson. If there are no further questions, comments—Mrs. Witmer?

Mrs. Elizabeth Witmer (Kitchener-Waterloo): I'd just like to ask Mr. Scott then, are you saying that nowhere in this bill will there be any opportunity to open the door to therapeutic substitution? There will be no therapeutic substitution allowed. Can you say that?

Mr. Scott: I think what I can state clearly is that none of the other provisions in the Drug Interchangeability and Dispensing Fee Act can be construed to allow for therapeutic substitution—can be interpreted to allow for therapeutic substitution, if this motion is adopted.

Mr. Jackson: So it can be done under the Ontario drug benefit plan, for example.

Mr. Scott: No. There is another motion upcoming, a government motion, that addresses the Ontario Drug Benefit Act as well.

Mr. Jackson: And this similar clause is in it?

Mr. Scott: Correct.

The Chair: If there are no further questions and comments, we'll proceed to the vote. All those in favour of government motion number 3? All those opposed? I declare government motion 3 to have carried.

We'll now proceed to PC motion 4. I offer the floor to Mrs. Witmer.

Mrs. Witmer: I move that section 1 of the bill be amended by adding the following subsection:

"(3) The act is amended by adding the following subsections:

"Similar

"(2) For the purposes of this act, active ingredients are only similar if they are similar in terms of pharmacological or pharmacokinetic activity.

"No therapeutic substitution

“(3) Nothing in this act requires a physician to accept the substitution of a drug on the grounds of it being a therapeutic equivalent.”

Again, I guess this is to confirm that therapeutic substitution will not be allowed, and it gives some definition to the word “similar” and clarifies the intent that there is to be no therapeutic substitution.

The Chair: Any further debate, questions, comments on this? Seeing none, we’ll—Mr. Jackson?

Mr. Jackson: It raises the question—again, when you only have these for one hour, I’ll ask some questions that appear dumb on the face of them, but I haven’t been able to read all this. Is there a definition in this act of “therapeutic substitution”?

There is not. So how can you give assurances in the act, as we just did when we passed your section, that it shall not be “construed to permit therapeutic substitution,” if we don’t have a definition of therapeutic substitution in this act? That’s what my colleague Mrs. Witmer and I are tabling, to introduce the concepts which are in the act of therapeutic equivalent and so on.

Ms. Halyna Perun: First of all, I think the intent is to—

The Chair: Please identify yourself.

Ms. Perun: Halyna Perun from the legal branch. The intent is to put forward regulations that would, in fact, define therapeutic substitution.

Mr. Jackson: So then my fears are valid that you are now controlling what you define as therapeutic substitution, and we’re attempting to define that in the bill. You can call therapeutic substitution anything you really want to in regulation. You’re just saying that nothing in this bill construes that it must be permitted, then you go out and define it. If you define it as one aspect of therapeutic substitution, then all other forms of therapeutic substitution can be called “therapeutic interchangeability” and you can throw that into the regs.

The Chair: Ms. Martel, the floor is yours while ministry staff are deliberating.

Ms. Martel: I agree with Mr. Jackson, so I’m wondering if it’s not worth our while to see if we can get a definition that can be put into the legislation.

Ms. Helen Stevenson: Helen Stevenson. The intent is to put the definition in the regulations of therapeutic substitution.

The Chair: Are there any further questions, comments or debate issues on this particular issue?

1610

Mrs. Witmer: I guess the problem we have—I mean, I can’t believe it. I’ve been here for 16 years. I thought this was a democratic institution. I can’t believe that one hour ago, we got over 100 amendments—in fact, 177 amendments—and we’re somehow supposed to understand and read them in that time period. It is totally impossible. This government doesn’t want good legislation. And then, when we ask the staff for clarification, we’re unable to totally get the responses that are necessary. The government is ramming this through. They don’t seem to care what they do to patients or any of the

people who are providing the services. It’s unbelievable; it’s draconian.

Mr. Jackson: I would really like to hear from legal counsel about the statement that I raised about the flexibility that the government maintains to interpret therapeutic substitution or therapeutic interchangeability, and why counsel was told not to include a definition in legislation, where you are specifically asserting that nothing in this legislation will be construed to achieve that effect. And then you don’t explain what the effect is or what its purpose is or what action it is. I’ve not seen legislation—I’ve been here 22 years. You’re going to refer to a concept: therapeutic substitution. Where’s the definition? Otherwise, this is meaningless, as I purposed. But I’d like legal counsel to be on record for that question, with all due respect.

The Chair: As you’re considering, Mr. Peterson.

Mr. Peterson: When we did the consultations with industry, they asked for no therapeutic substitution and no reference-based pricing. We have proceeded on that process. It is our process, obviously, to put some things in regulations and some things in legislation. You are disagreeing with that; we hear you. But we have gone on the record as saying, “No therapeutic substitution.” We will be measured on whether we do what you say and change the definition to allow therapeutic substitution, which is what you’re inferring we’re about to do, which is not what we’re about to do. We are saying clearly here, “There is no therapeutic substitution.” It’s frankly a detail that—putting it in regulation is our way of doing that. We are on the record as having said that.

Mr. Jackson: With all due respect, we’re dealing with the legal language of a bill. People take this piece of legislation when their rights are abrogated, they go to court and they say, “This law clearly says this is what we can rely upon.” Definitions are a defining feature of any legislation to guide people in its interpretation. This is bill writing 101, Mr. Peterson, and that’s why counsel is having a hard time responding. They know that it’s quite unusual to refer to something that is going to be included or a right conveyed about a concept which has no other reference in the legislation.

Mr. Peterson: We understand you would prefer this in legislation. We’re putting it in regulation. Thank you very much. I call the vote.

The Chair: Mr. Peterson, with respect, there’s no calling for the vote until debate has exhausted itself at 5 p.m. I will now, as Mr. Jackson has raised, route the floor to ministry staff, if they care to reply.

Mr. Scott: Simply to state that right now there is nothing in the legislation, in Bill 102, that speaks to therapeutic substitution one way or another. That has already been addressed by the committee in an earlier motion. This clause would state that nothing in the act, in the DIDFA, shall be construed to permit therapeutic substitution. There is no further definition of that term in the legislation.

There is an ability under the bill to define any term further, by regulation. Therefore, the term “therapeutic

substitution” or other terms which are not defined in the legislation may be further defined by regulation. However, it’s important to note that there was nothing in the bill prior that was addressing therapeutic substitution one way or another, so legally it is significant in the sense that we are adding in a provision in the legislation that speaks to no therapeutic substitution.

Mr. Jackson: That is what I understood to be the process for writing bills.

Have you had an opportunity to look at each of the opposition amendments, Liam?

Mr. Scott: We have collectively looked at all of them. I have not personally looked at all of them myself.

The Chair: Thank you, Mr. Jackson. Thank you to ministry staff.

Mrs. Witmer: I’d just like to ask ministry staff, in subsequent amendments that we’re going to be dealing with, is there any obligation on your part, the part of the government, to consult on the definition of therapeutic substitution, or do you not have to do that?

Ms. Perun: With respect to the further government motions, there is a motion being proposed to consult on draft regulations, so that there would be a consultation on the definition of therapeutic substitution as well.

Mrs. Witmer: So you are obligated and will be consulting on the definition of therapeutic substitution.

Ms. Perun: By way of a government motion to follow, yes. There’s a government motion in this package that provides for public consultation on draft regulations.

Ms. Martel: Mr. Chair, I’ll be brief. I heard the explanation from counsel with respect to therapeutic substitution. My point would be that if it was important enough because of the concerns that were raised to put in an amendment that specifically says that nothing in this act shall be construed to permit therapeutic substitution, I would have thought it would have been equally as important to actually define what that was. So I regret that we are obviously at an impasse, because I do agree it’s important. We heard many concerns, but it seems that the second part has not followed logically: (1) We are saying it can’t happen, but (2) we haven’t defined in the legislation what it is that can’t happen. I think that’s the wrong way to go, but I recognize that it’s not going to change here today.

The Chair: Are there any further questions, comments or debate on this?

Mr. Peterson: If I may—Ms. Stevenson.

Ms. Stevenson: I just wanted to provide some further clarification. We spent approximately 10 hours with Rx&D and several of the big pharmaceutical companies to discuss not permitting therapeutic substitution and to further define it. We worked with them very intensely. We also shared some of that work with patient groups. At the end of that consultation with them, Rx&D signed off that we would put this clause in the legislation and that we would further define it through the regulations.

1620

Ms. Martel: All right. I was going to stop. But my concern is—it’s fine that that was done in some other

forum that we were not party to; none of the opposition nor the government members—to be perfectly blunt about it, I don’t accept that as an acceptable way to do business. It’s great that Ms. Stevenson had some consultations with other people and certain agreements were made. We were not privy to that.

We heard a lot of concerns about this here during the public hearings. I’ll say it again: If the government thought it was fine to put in an amendment to say this couldn’t happen, the second logical step would have been to put the definition in as well. That would have been the appropriate thing to do for the public record.

The Chair: Are there any further questions or comments? Seeing none, we’ll now proceed to the vote.

Mr. Jackson: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 4 to have been defeated.

I will now ask for a vote on the section. Shall section 1, as amended, carry? All those in favour? All those opposed? I declare section 1 to have carried, as amended.

I will now offer the floor to the opposition side for PC motion 5.

Mrs. Witmer: I move that clause 1.1(3)(a) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by striking out “or similar.”

The Chair: Are there any comments, further debate or questions with regard to PC motion 5? Seeing none, we’ll proceed to the vote. All those in favour of PC motion 5? All those opposed? I declare PC motion 5 to have been defeated.

I would also, with respect, ask committee members to vote in a recognizable manner so that the committee Chair and clerk can actually determine which way you’re voting.

Ms. Kathleen O. Wynne (Don Valley West): Is that with an arm?

The Chair: Whatever appendage is available, Ms. Wynne.

I would now offer the floor to—government motion 6.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): I move that section 1.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by adding the following subsection:

“Similar active ingredients

“(3.1) In clause (3)(a),

“‘similar active ingredients’ means different salts, esters, complexes or solvates of the same therapeutic moiety.”

The Chair: Are there any further questions, comments or debate on this particular government motion 6? Any further comments?

Ms. Martel: Can I ask where this comes from as a definition?

Mr. Brent Fraser: Brent Fraser, Drug System Secretariat.

The definition itself was confirmed with a number of experts within both Ontario and a number of other provincial jurisdictions, who advised the government around what they would characterize a similar active ingredient as. This was based on their recommendations for putting some parameters around "similar active ingredients."

The Chair: Are there any further questions or comments on government motion 6? Seeing none, we'll proceed to the vote. All those in favour of government motion 6? All those opposed? I declare government motion 6 to have carried.

The floor is now open to the opposition, the PC Party, for PC motion 7.

Mrs. Witmer: I move that section 1.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by adding the following subsection:

"No substitutions

"(3.1) Despite anything in this act, an interchangeable product shall not be supplied in place of a drug referred to in a prescription where a physician has indicated 'no substitution' on the prescription."

Of course, again, this deals with the concern around therapeutic substitution. Hopefully, this amendment would protect the doctor-patient relationship and recognize that the physician, and nobody else, should have the final say over what drugs are given to what patients at any time.

The Chair: Questions or comments?

Mr. Jackson: I just want to say that a promise was made by the government that this would be upheld, so I'm looking forward to their support.

Mr. Peterson: We will not be voting for this amendment because "no substitution" is defined elsewhere.

Mr. Jackson: No; it's talking about "dispense as written." That's an entirely different concept, Mr. Peterson. If you need a little time to understand it, you should take it, but this is that what the doctor puts on his script shall be filled. It's called "dispense as written."

Mr. Peterson: We agree that that should be the process. We're not defining it here under this—we're not doing it your way, that's all.

Mr. Jackson: So, in your amendments that we only had an hour to look at, where is your amendment that covers that?

Mr. Peterson: Brent Fraser?

Mr. Fraser: There already are provisions within the Drug Interchangeability and Dispensing Fee Act that clearly state that when a physician writes "no substitution" on the prescription, the pharmacist must dispense the prescription as written.

Mr. Jackson: Where is that in the legislation?

Mr. Fraser: That's included in subsection 4(6) of the Drug Interchangeability and Dispensing Fee Act, within the existing act itself.

The Chair: Are there any further questions or comments on PC motion 7? Seeing none, we'll proceed to the vote. All those in favour of PC motion 7? All those opposed? I declare PC motion 7 to have been defeated.

PC motion 8: The floor is Ms. Witmer's.

Mrs. Witmer: I move that section 1.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by adding the following subsection:

"Same active moiety

"(3.1) Despite any other provision of this act, the executive officer shall not designate a product as being interchangeable with another product of the same active moiety unless the designation has first been reviewed by the committee known as the Committee to Evaluate Drugs."

The Chair: Any further comments or questions from any side? Seeing none, we'll proceed to the vote. Those in favour of PC motion 8? Those opposed? I declare PC motion 8 to have been defeated.

I offer the floor to the government for government motion 9.

Mr. Peterson: I move that section 1.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by adding the following subsection:

"Non-application of SPPA

"(5.1) The Statutory Powers Procedure Act does not apply to anything done by the executive officer under this act."

The Chair: Further debate?

Ms. Martel: Very briefly, this is one of three—and there may be more, since I haven't got through the whole government package—where the government has said that the Statutory Powers Procedure Act does not apply to decisions of the executive officer. I disagree fundamentally with that. I believe a decision or action of the executive officer, or the director of the drug program branch, as we would rather it be, should be able to be appealed to the Superior Court of Justice. So we're voting against those sections where that is taken out.

Mr. Jackson: The same comment: We are literally separating the public from its health protection by putting this individual in place with that much power. It just flies in the face of everything that all of us came to Queen's Park to fight for. To expose pharmacy to liability and to indemnify completely an unelected individual for making decisions that, quite frankly—this is not meant to be dramatic, but these are life-and-death decisions about which drugs are available, how they're dispensed, how much we pay for them and what people can afford to pay in this province. To remove this simple right of a citizen in our province is just beyond me, and morally I can't. This has to be a recorded vote.

1630

Mrs. Witmer: In order to be brief, since we only have 30 more minutes that we're allowed to even speak on any of these amendments, I would just ditto what's been said by the other two speakers.

The Chair: Are there any further comments, questions or debate on this government motion 9? Seeing none, we'll proceed to the vote.

Ms. Martel: Recorded vote.

Ayes

Fonseca, Kular, Peterson, Ramal, Wynne.

Nays

Jackson, Martel, Witmer.

The Chair: I declare government motion 9 to have carried.

The floor is now Ms. Martel's for NDP motion 10.

Ms. Martel: I move that section 1.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 2 of the bill, be amended by adding the following subsection:

"Regulations necessary

"(6) Despite anything else in this act, nothing set out in the formulary is effective unless it has been confirmed by a regulation made by the Lieutenant Governor in Council, and the Lieutenant Governor in Council has the authority to make any such regulation, and also to make any regulations that the Lieutenant Governor in Council considers advisable to control the exercise of the powers of the director of the drug program branch."

I said in my earlier remarks that New Democrats disagree with the excessive powers that are being given to someone who is not elected. We say that that person should be a bureaucrat and, secondly, that important decisions currently made by regulation, so that cabinet has to agree to them, should continue to be so made, especially when we're setting out what's going to be in the formulary.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Ms. Martel: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 10 to have been defeated.

The floor is yours again, Ms. Martel, for NDP motion 11.

Ms. Martel: Given the information that was provided to us by legislative counsel—that there is a provision in the current DIDFA that says no substitutions are allowed if it's written by a physician—I withdraw this amendment.

The Chair: Thank you, Ms. Martel.

We'll proceed now to the vote for this section. Shall section 2, as amended, carry? All those in favour? All those opposed? I declare section 2, as amended, to have carried.

We'll now proceed to the consideration of a new section 2.1 for NDP motion 12.

Ms. Martel: I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Regulations necessary

"1.2 Despite anything else in this act, nothing set out in the formulary is effective unless it has been confirmed by a regulation made by the Lieutenant Governor in Council, and the Lieutenant Governor in Council has the authority to make any such regulation."

My comments are the same as previously in terms of trying to have a check and balance on the power of this new executive director.

The Chair: Further debate? Questions or comments? Seeing none, we'll proceed to consideration of NDP motion 12.

Ms. Martel: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 12 to have been defeated.

We'll now proceed to consideration of section 3: PC motion 13. The floor is Mrs. Witmer's.

Mrs. Witmer: I move that section 3 of the bill be struck out and the following substituted:

"3. Subsection 4(5) of the act is repealed."

As you know, there were arguments from OCDA, CACDS, the Coalition of Ontario Pharmacy and the Canadian Pharmacists Association about this section, and tremendous concern that this could well create US HMO-style drug programs and that the inclusion of the word "similar" opens the door to therapeutic substitution along the lines of the US Department of Veterans Affairs model. There was also a lot of concern that there was no provision for how pharmacists were going to be compensated for the professional functions involved in making such interchanges in accordance with protocols. So we recommend this.

The Chair: Are there any further comments, questions or issues?

Ms. Martel: I agree with Mrs. Witmer. We were going to vote against the whole section as a result.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mrs. Witmer: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 13 to have been defeated.

Shall section 3 carry? All those in favour?

Ms. Martel: Recorded vote.

Nays

Fonseca, Jackson, Kular, Martel, Peterson, Ramal, Witmer, Wynne.

The Chair: I declare that section to have been lost.

We'll now move to the consideration of section 4. I offer the floor to the government for government motion 14.

Mr. Ramal: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Extended definition of 'manufacturer'

"(1.1) For the purposes of this section and in section 12.2 unless the context requires otherwise,

"'manufacturer' includes a supplier, distributor, broker or agent of a manufacturer, except in,

"(a) clause (1)(b) of this section,

"(b) paragraph 2 of subsection (7) of this section,

"(c) subsection (9) of this section, and

"(d) clauses (b) and (c) of the definition of 'drug benefit price' in subsection (10) of this section."

The Chair: Any further comments, issues of concern, debate? Seeing none, we'll proceed to the vote. All those in favour of government motion 14? All those opposed? I declare government motion 14 to have carried.

The floor is once again the government's, for government motion 15. Ms. Wynne.

Ms. Wynne: I move that subsection 12.1(2) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

"May not accept rebate

"(2) No wholesaler, operator, company, director, officer, employee or agent mentioned in subsection (1) shall accept a rebate that is mentioned in subsection (1), either directly or indirectly."

This makes it clear who may not accept a rebate.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 15? All those opposed? I declare government motion 15 to have carried.

We'll now move to the next motion, PC motion 16. I offer the floor to Ms. Witmer.

Mrs. Witmer: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Code of conduct

"(2.1) The minister shall, in consultation with the pharmacy and drug industries, develop a code of conduct respecting acceptable marketing practices, and may make regulations setting out that code of conduct and requiring that it be adhered to by manufacturers and health professionals."

This would, of course, govern the provision of rebates and promotional allowances and would ensure that some of the more unsavoury practices that the minister spoke to and that are rumoured to be occurring would no longer be able to take place.

The Chair: Any issues of concern, further comments, debate, questions? Seeing none, we'll proceed with the vote. All those in favour of—

Mrs. Witmer: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 16 to have been defeated.

The floor is now Ms. Martel's for NDP motion 17.

Ms. Martel: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsections:

"Professional allowance

"(2.1) Subject to subsection (2.2), a manufacturer may provide a professional allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies.

"Disclosure of professional allowance

"(2.2) A manufacturer that provides a professional allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies shall inform the director of the drug program branch of the details of the professional allowance."

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The wording of this comes from a submission that was made by the Ontario Chain Drug Store Association. The second provision, in particular, was new in that it made the recommendation that somebody had to be informed of the details of the professional allowance that was

being provided. I think that provides for increased transparency of professional allowances, what they are for and who is getting them. I would urge support.

Ms. Wynne: I just want to make a comment that on a number of these we are bringing motions later that will address many of these issues, and I'd like a recorded vote on this.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 17 to have been defeated. I offer the floor now to Ms. Witmer for presentation of PC motion 18.

Mrs. Witmer: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsections:

“Professional allowance

“(2.1) Subject to subsection (2.2), a manufacturer may provide a professional allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies.

“Disclosure of professional allowance

“(2.2) A manufacturer that provides a professional allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies shall inform the executive officer of the details of the professional allowance.”

Of course, one of the overriding themes of the introduction of this bill dealt with the threat to the financial viability of pharmacies throughout the province of Ontario and the impact this was going to have, particularly in rural and northern Ontario, where often there are no doctors and it is the pharmacist who is the deliverer of the primary care.

Another concern was for the small and independent pharmacies that have little or no front shop to subsidize their back shop. There was concern expressed about the elimination of rebates that were going remove an estimated \$150,000 to \$200,000 in revenue from pharmacies. As a result, we want to introduce this motion.

Ms. Martel: I agree with the motion that's been brought, and for the record I'd say this: If the government is bringing forward amendments that are essentially going to be similar, I really do wonder why they can't accept amendments from the opposition that are the same and deal with the same point. I guess that's the way it's going to be here today, but I find it most regrettable that the government would choose only to support its own amendments, especially if they're similar.

The Chair: Are there any further areas of concern, questions, comments?

Mr. Jackson: Recorded vote.

The Chair: Seeing none, it will be a recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 18 to have been defeated.

I offer the floor to Ms. Witmer for the presentation of PC motion 19.

Mrs. Witmer: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsections:

“Educational allowance

“(2.1) Subject to subsection (2.2), a manufacturer may provide an educational allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies.

“Disclosure of educational allowance

“(2.2) A manufacturer that provides an educational allowance to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies shall report to the executive officer the details of the educational allowance.”

Again, the argument is much the same.

The Chair: Are there any further issues of concern?

Mr. Jackson: Recorded vote.

The Chair: Seeing none, we'll proceed to the recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 19 to have been defeated.

The floor is now Mrs. Witmer's for PC motion 20.

Mrs. Witmer: I move that paragraph 2 of subsection 12.1(7) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

“2. Not make further designations of any of the manufacturer's products as interchangeable under this act until such time as the executive officer is of the opinion that the manufacturer is no longer offering the rebate.”

This particular proposed amendment simply narrows the scope of the penalty in cases where a rebate is found to have been provided in connection with an interchangeable product so that the penalty only applies to the interchangeable product and applications for designation as an interchangeable product.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote. All those in favour of PC motion 20? All those opposed? I declare PC motion 20 to have been defeated.

The floor is now to the government side for presentation of government motion 21.

Mr. Fonseca: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsections:

"Executive officer order where rebate accepted

"(9.1) Where the executive officer believes, on reasonable grounds, that a person has accepted a rebate contrary to subsection (2), the executive officer may make an order requiring the person to pay to the Minister of Finance the amount calculated under subsection (4).

"Reconsideration

"(9.2) Subsections (5) and (6), subsection (7), other than paragraphs 1 and 2, and subsection (8) apply with any necessary modifications where an order has been made under subsection (9.1)."

The Chair: Further debate, questions, comments, issues of concern? Seeing none, we'll proceed to the vote. Those in favour of government motion 21? Those opposed? I declare government motion 21 to have been carried.

The floor is now to the government side.

Mr. Kular: I move that section 12.1 of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Lesser amount

"(9.3) Despite any other provision of this section, the executive officer may, in an order under subsection (3) or (9.1), require the manufacturer or other person to pay an amount less than the amount calculated under subsection (4) and, where the executive officer does so, the following apply:

"1. The executive officer shall set out in the order both the lesser amount and how it was calculated.

"2. Any right of reconsideration that applies with respect to a calculation under subsection (4) applies with respect to the calculation under paragraph 1."

The Chair: Are there any further questions or comments on these issues? Seeing none, we'll proceed to the vote. Those in favour of government motion 22? All those opposed? I declare government motion 22 to have been carried.

The floor is now Mrs. Witmer's for presentation of PC motion 23.

Mrs. Witmer: I move that the definition of "rebate" in subsection 12.1(10) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

"rebate includes a discount, refund, trip, free goods or other prescribed benefit, but does not include a professional allowance or a discount for prompt payment offered in the ordinary course of business. ('rabais')"

Of course, what this is attempting to do is clarify the definition of "rebate" in order that professional allowances would be allowed.

The Chair: Are there any further questions, comments, issues of concern on PC motion 23? Seeing none, we'll proceed to the vote. All those in favour of PC motion 23? All those opposed? I declare PC motion 23 to have been defeated.

We move now to the government side for government motion 24.

Mr. Peterson: I move that the definition of "rebate" in subsection 12.1(10) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

"rebate," subject to the regulations, includes, without being limited to, currency, a discount, refund, trip, free goods or any other prescribed benefit, but does not include,

"(a) a discount for prompt payment offered in the ordinary course of business, or

"(b) a professional allowance ('rabais')."

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The Chair: Are there any further questions or comments on government motion 24? Seeing none, we'll proceed to the vote. All those in favour of government motion 24? All those opposed? I declare government motion 24 to have been carried.

The floor is now Mrs. Witmer's for PC motion 25.

Mrs. Witmer: I move that the definition of "rebate" in subsection 12.1(10) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following definitions substituted:

"educational allowance" means a benefit in the form of money that is provided in the ordinary course of business to wholesalers, operators of pharmacies, or companies that own, operate or franchise pharmacies;

"rebate" means a discount, refund, trip, free goods or any other prescribed benefit, but does not include an educational allowance, a discount for prompt payment or a distribution charge paid to a wholesaler offered in the ordinary course of business ('rabais')."

Again, we are looking for the definition of educational allowance, and we have attempted here to define a rebate and have expanded it to allow for wholesalers to receive distribution charges.

The Chair: Any further comments, debate, issues of concern? Seeing none, we'll proceed to the vote. All those in favour of PC motion 25?

Mrs. Witmer: Recorded, please.

Ayes

Martel, Witmer.

Nays

Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 25 to have been defeated.

The floor is now Ms. Martel's for presentation of NDP motion 26.

Ms. Martel: I move that subsections 12.1(10) and (11) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Definitions

"(10) In this section,

"'drug benefit price' means, with respect to a product, its drug benefit price under the Ontario Drug Benefit Act; ('prix au titre du régime de médicaments')

"'professional allowance' means a benefit in the form of money, services or educational or promotional aids that are provided by a manufacturer in the ordinary course of business to operators of pharmacies or companies that own, operate or franchise pharmacies for the purposes of enhancing patient care; ('allocation professionnelle')

"'rebate' includes a trip, free goods, gifts and other items that are intended for personal or family benefit or pecuniary advantage but does not include a professional allowance or discount for prompt payment offered in the ordinary course of business. ('rabais')

"Regulations

"(11) The Lieutenant Governor in Council may make regulations clarifying how the calculations are to be made in this section.

"Code of conduct

"(12) The ministry, in accordance with the pharmacy and generic drug industries, shall maintain a code of conduct by which those industries will abide, that governs acceptable practices and that includes provisions for enforcement and remedies, and that allows those industries to negotiate the level of investment made in professional allowances."

This was an amendment that was put to the committee by the Ontario Pharmacists' Association. It has good definitions with respect to professional allowance and rebates, and that the ministry will also enforce a code of conduct and that there will be negotiations around that with the OPA with respect to what happens in that regard.

The Chair: Any further comments?

Mr. Peterson: In philosophy, we agree with many of the aspects of this—it may be even addressed in other parts of the bill—except the issue of the Lieutenant Governor in Council. We wish to make the process more open and transparent; hence we've appointed an executive officer whose opinions and deliberations will be made public.

Ms. Martel: Can I ask this question? Is it the executive director who's going to determine the calculations? I'm trying to flip back to a previous government amendment with respect to calculations.

The Chair: If ministry staff would care to reply, please?

Ms. Perun: Compensation with respect to rebates, they are to be calculated by the executive officer under the provisions of the amended legislation.

Ms. Martel: So they will be calculated, but that's the end of the accountability because they don't have to be done by regulation afterwards?

Ms. Perun: But there are some government motions to follow that do address professional allowances and the code of conduct as well.

Ms. Martel: But who is going to be responsible for the development of those in the amendments that are coming? Is that going to be the government in conjunction with the OPA?

Mr. Fraser: The intent of the code of conduct is to be developed in consultation with the pharmacists and the manufacturers.

Ms. Martel: Okay. But the difference, as I understand it in terms of why the government's not accepting this particular amendment, is because they would prefer the executive director to have the sole discretion to determine the calculations where my amendment says the Lieutenant Governor in Council would do that, so cabinet would have to approve those calculations. Is that essentially the difference that we're dealing with?

Ms. Perun: I just wanted to clarify what I said earlier. With respect to the calculations of rebates generally in terms of what's owing, the executive officer has that authority, but with respect to the calculation of the permissible limits on professional allowances, for example, that will also be set out in regulation as proposed by a government motion. Therefore, in the same way as in the NDP motion that the Lieutenant Governor in Council may make regulations with respect to calculations, the government motion does so with respect to the professional allowance piece.

Ms. Martel: So what's the reason for not voting for this amendment again? It's not a trick question.

Mr. Perun: Simply that the government motion to follow crafts the definition of "rebates" and what's exempted from the definition of "rebates" in a somewhat similar but different fashion.

Ms. Martel: Ah, you guys. I'll just say it again: The process is bad already, but if we're not even going to look at opposition amendments because there might be a small change in definition, then the process has really gone from bad to worse here this afternoon. Okay, go ahead. I'd like a recorded vote.

The Chair: If there are no further questions or comments, we will proceed to the recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 26 to have been defeated.

I offer the floor to Mrs. Witmer for PC motion 27.

Mrs. Witmer: I move that subsection 12.1(10) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be amended by adding the following definition:

“‘professional allowance’ means a benefit in the form of money that is provided by a manufacturer in the ordinary course of business to wholesalers, operators of pharmacies or companies that own, operate or franchise pharmacies. (‘allocations professionnelles’)”

Again, this is an amendment which attempts to define professional allowance as cash only, so that some of the nefarious practices hinted at by the minister, such as the provision of trips and goods and services, are outlawed. We also believe this would ensure transparency and accountability. Also, it would enable the financial viability of a pharmacy to continue to thrive.

The Chair: Any further comments? Seeing none, we’ll proceed to the vote.

All those in favour of PC motion 27?

Mrs. Witmer: Recorded.

Ayes

Jackson, Martel, Witmer.

Nays

Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 27 to have been defeated.

Mrs. Witmer for PC motion 28.

Mrs. Witmer: I move that subsections 12.1(10) and (11) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4 of the bill, be struck out and the following substituted:

“Definitions

“(10) In this section,

“‘drug benefit price’ means, with respect to a product, its drug benefit price under the Ontario Drug Benefit Act; (‘prix au titre du régime de médicaments’)”

“‘professional allowance’ means a benefit in the form of money, services or educational or promotional aids that are provided by a manufacturer in the ordinary course of business to operators of pharmacies or companies that own, operate or franchise pharmacies for the purposes of enhancing patient care; (‘allocation professionnelle’)”

“‘rebate’, includes a trip, free goods, gifts and other items that are intended for personal or family benefit or pecuniary advantage but does not include a professional allowance or discount for prompt payment offered in the ordinary course of business. (‘rabais’)”

“Regulations

“(11) The Lieutenant Governor in Council may make regulations clarifying how the calculations are to be made in this section.”

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“Code of conduct

“(12) The Ministry, in accordance with the pharmacy and the generic industry, shall maintain a code of conduct, by which the pharmacy and the generic industry will abide, that governs acceptable practices and that includes provisions for enforcement and remedies

“Negotiation

“(13) The code of conduct shall allow the pharmacy and the generic industry to negotiate the level of investment made in professional allowances.”

Again, it really finds the drug benefit price rebate creates a definition of professional allowance and, as you can see, the promotional allowance definition allows for education and promotional aids as well as services. It is broader than the OCDA definition, which was limited to cash. It sets up a code of conduct specific to the pharmacy and generic industry, with respect to rebates and promotional allowances, to ensure that the more unsavoury practices that have been rumoured no longer occur, and it calls for a negotiation on the level of professional allowances.

The Chair: Are there any further questions, comments or issues of concern for PC motion 28? Seeing none, we’ll proceed to the vote.

Mr. Jackson: Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 28 to have been defeated.

To government motion 29.

Mr. Ramal: I move that subsection 12.1 (11) of the Drug Interchangeability and Dispensing Fee Act, as set out in section 4. of the Bill, be struck out and the following substituted:

“Regulations

“(11) The Lieutenant Governor in Council may make regulations clarifying the definition of ‘rebate’ in this section, including providing that certain benefits are not rebates, prescribing benefits for the purpose of that definition, clarifying how the calculations are to be made in this section and defining ‘professional allowance’ for the purposes of that definition, including governing how professional allowances are to be calculated, setting limits on professional allowances and incorporating the content of the code of conduct referred to in subsection 11.5(10.4) of the Ontario Drug Benefit Act as amended from time to time.”

The Chair: Thank you, Dr. Ramal.

I would advise the committee once again with respect that, according to the order of the House passed on Tuesday, May 9, in the evening, we will now proceed without further questions, comments or debate immediately to the vote, and I'll have some further comments of that.

All those in favour of government motion 29? All those opposed? I declare government motion 29 to have carried.

I also inform members of the committee that now that it is past 5 p.m., in accordance with that order of the House, all motions are now deemed to have been moved from the government side, Mr. Peterson, from the opposition side, Mrs. Witmer, and from the third party NDP side, Ms. Martel.

We will now proceed to the immediate consideration of government motion 30. All those in favour of government motion—

Interjection.

The Chair: I'm sorry. You're quite correct. All those in favour of PC motion 30? All those opposed? I declare PC motion 30 to have been defeated.

All those in favour of government motion 31? All those opposed? I declare government motion 31 to have carried.

Proceed to the next motion.

Mrs. Witmer: On a point of order, Mr. Chair: We got these motions an hour before. I do not have time to even read the motion. That motion is a page in length when you call the question. How can I make any intelligent decision as to whether I can support this or not?

The Chair: Thank you, Mrs. Witmer. For the moment, I will confer.

Ms. Wynne.

Ms. Wynne: This process is one that was confirmed by the House leaders. This is a process that I'm sure the members of the official opposition are very familiar with in terms of time allocation. It's not something that happens frequently under this government. It's something that the House leaders agreed upon and that's why we're doing it. There are three House leaders, one from each party.

Mrs. Witmer: No, they did not.

Ms. Martel: Absolutely not; there was no agreement by the House leaders with respect to this process. I was sitting in the House on a Monday night several weeks ago when the motion for time allocation, which this mess right now is part of, was delivered to Mr. Kormos, who was sitting beside me. That is the first time he saw the motion. Let me repeat: There was no agreement, there was no discussion and there was no negotiation. There was nothing with respect to how this process was going to unfold—not with respect to how much longer second reading would go; not with respect to the public hearings, not even the days we were going to sit; not with respect to the clause-by-clause, the mess we're going through now; nor with respect to when this was going to be voted back or when third reading was going to take place.

I resent the government saying, on the record, that somehow there was some negotiation and we agreed to

this. This was dropped on us. It was forced through by a time allocation motion because the government stood up and voted for it, but there was no agreement, not between New Democrats and the Conservatives, about this whole process and what's happening now—absolutely not.

Mr. Jackson: I don't want to engage in this debate. My anger about this is very clear. What I will state from what I stated earlier is that I have a few more pages to go where I've read every amendment, but there will come a point in this process where I haven't read any of these pages, where it was an impossibility. The motion says that we were to have access to those amendments by 12 o'clock; we did not. I got them close to 3 o'clock. They were put on my desk in the legislative chamber, where we were preoccupied with House business. To be fair, all I think my colleague has raised, and what I'm raising at this point—because I don't want this to be a debate. This whole sordid thing is wrong. However, we have to complete this bill. I would just like sufficient time in order to read it. That's all I want. If I can read it, then I'll know what I'm voting for and what I'm voting against: I think that is a reasonable request to make to the Chair. It will add some time but we will be done today, before 12:01 tomorrow.

The Chair: The Chair has the power to actually slow the process down in order to allow all committee members to read the particular amendment, but as I say, I am bound by the order of the House.

Having said that, I will now move to the reading consideration of government motion 32.

Mr. Jackson: I've read it.

The Chair: Thank you, Mr. Jackson. If the committee is ready to proceed to the vote, then we shall do so. All those in favour of government motion 32? All those opposed? I declare government motion 32 to have carried.

We'll now proceed to consideration of NDP motion 33. There is no comment. If there is a request for a recorded vote, this will be pooled to the end of the consideration and deliberations for today.

Ms. Martel: Recorded vote.

The Chair: So we will now—

Interjection.

The Chair: Yes, Mr. Jackson.

Mr. Jackson: If I understand your ruling, all those that we request to be recorded should be stacked to the end?

The Chair: I understand that is the procedure.

Mr. Jackson: Then we will request recorded votes on everything and that will allow us to go sequentially. This is way too confusing. First of all we haven't read it; secondly, we're having a hard time comprehending it; and now we're going to change the order. So we will stay within the rules, I'll call it on a technicality, and let's just proceed, if I can give that as friendly advice to the Chair.

1710

The Chair: As the clerk informs me, members are entitled to one 20-minute recess and then we are going to the recorded votes.

Mr. Jackson: I'm still confused, Mr. Chairman, about your ruling. Are we stacking the votes, yes or no?

The Chair: Yes.

Mr. Jackson: Okay. Then if we're stacking them, we have to go through them individually. Mr. Chair, could you not accept, as a friendly suggestion, that we just proceed in sequential order?

The Clerk of the Committee (Mr. Trevor Day): That's what we're doing. Normally we'd take only those recorded to the end. In this case, we've put all the recorded on the end, so we're back in the same place, each one recorded from here on in.

Mr. Jackson: That's only going to add unnecessary time. Can we have unanimous agreement to just proceed with the votes we want to have recorded as they come up and we can move through this quickly? I'm asking the Chair, not the clerk.

The Clerk of the Committee: Wasn't there just a request to have all the rest recorded?

Mr. Jackson: Yes, I know. I was saying, technically, that's how I can get around it. I don't want to do that. I want to move through this sequentially. I don't want to jump around. That's all I'm asking. This is confusing enough.

The Clerk of the Committee: Any request for a division has to be put to the end. It's currently in the order of the House. We have no control over that.

Mr. Jackson: I get all that. The Chair has a certain latitude to get this done before midnight.

The Clerk of the Committee: Not in this regard.

The Chair: Mrs. Witmer, please.

Mrs. Witmer: So we have to go through all of these one more time?

The Clerk of the Committee: No. If in essence you're saying every one recorded, then from here on in each one will be recorded, but we go in the order that they are in right now. So we just record every vote between here and the end.

Mrs. Witmer: Okay.

The Clerk of the Committee: Otherwise, we have to go through them and then come back for any recorded request.

Mrs. Witmer: I guess that's what I don't want to do: come back and go through them all again. That makes no sense.

The Chair: Just for consideration of the committee, and particularly Mr. Jackson, I don't think that any kind of requesting of recorded votes or not will add any time to the deliberation per motion, as far as I can determine.

Mr. Jackson: We're at 33. We've got to go to 177. If my request for a recorded motion on everything is in order, we're going to be here for a couple of hours, okay? Plus, I get my 20 minutes—once, per member per opposition.

The Clerk of the Committee: With the recorded vote request, you get one for the entire stacking. So if you requested that everything be stacked, everything be recorded, you're allotted one 20-minute recess.

Mr. Jackson: Who is "you"? Everybody?

The Clerk of the Committee: The committee. There is one. It's in the motion.

Mr. Jackson: There's one. Yes. I didn't come here tonight looking for a recess; I came here to get the bill done.

The Clerk of the Committee: Do we still have the request for all of them to be recorded?

The Chair: Mrs. Witmer.

Mrs. Witmer: Do you know what? I don't believe it's necessary that we record all the votes.

The Chair: All right. Mr. Jackson.

Mr. Jackson: Mr. Chair, I would request that all opposition motions be recorded and we'll leave it at that. That should be more helpful.

The Chair: Thank you, Mr. Jackson.

Taking that as the will of the committee, all opposition motions henceforward for tonight will be recorded.

Mr. Jackson: Which means, Mr. Chairman, that we can't approve sections until the very end.

The Chair: Yes, Mr. Jackson.

So NDP motion 33, as an opposition motion, is deferred towards the end, as is PC motion 34.

We will now proceed to the vote on government motion 35. I will allow committee members to peruse government motion 35, and having determined when they've read it, we'll then proceed to the vote.

All those in favour of government motion 35? All those opposed? I declare government motion 35 to have been carried.

We will not be considering section 4, as amended, because of deferred votes for opposition motions.

We'll now go to section 5: PC motion 36, deferred; PC motions 37 and 38 also deferred.

We'll now proceed to the consideration of government motion 38.

Ms. Martel: I'm trying to follow in the bill. I'm sorry; I'm not trying to prolong this, but—

The Chair: Sure.

Interjection.

Ms. Martel: No, it's not the amendment. I'm trying to follow in the bill at the same time so I can understand the effect of the change. If I could just get some help from somebody about where we are in the bill itself? It's 5(2). So we're starting on page 6?

Mr. Jackson: Bottom of 5.

Ms. Martel: Bottom of 5. Okay, I've got it—5(2).

Thanks, Mr. Chair. Sorry about that.

The Chair: Are we ready to proceed to the vote consideration of government motion 38? Taking that as the will of the committee, all those in favour of government motion 38? All those opposed? I declare government motion 38 to have carried.

We'll now proceed to the reading of government motion 39.

May I take it that the motion has been perused? All right. We'll proceed to the vote. All those in favour of government motion 39? All those opposed? I declare government motion 39 to have carried.

We will not be considering section 5, as there were some deferred opposition amendments.

Section 5.1: Opposition amendment 40 is also now deferred, as is motion 41.

We'll move to the consideration of section 6. PC motion 42 is deferred.

We'll now move to the perusal of government motion 43.

We'll proceed now to the vote on government motion 43. All those in favour? All those opposed? I declare government motion 43 to have carried.

We defer the next three motions: opposition motions 44, 45 and 46—and 47, actually.

1720

We'll now move to the reading of government motion 48.

Now we'll move to consideration of government motion 48. All those in favour? All those opposed? I declare government motion 48 to have carried.

The next three motions are deferred: 49, 50 and 51. Section 6 shall not be considered at this time because of the deferral.

We'll move now to consideration of section 7. The next several motions are deferred: 52, 53, 54, 55, 56, 57, 58 and 59.

We'll now move to the reading of government motion 60.

We'll move now to the consideration of government motion 60. All those in favour? All those opposed? I declare government motion 60 to have carried.

We will not be considering section 7 at this time because of the deferred motions.

We'll move now to the consideration of section 8. Again, several motions are deferred. They are motions 61, 62, 63, 64, 65, 66, 67, 68, 69 and 70.

We'll now move to the reading of government motion 71.

With the committee's permission, we'll consider the vote for government motion 71. All those in favour? All those opposed? I declare government motion 71 to have carried.

We'll now move to the reading of government motion 72.

Now we'll move to voting consideration of government motion 72. All those in favour? All those opposed? I declare government motion 72 to have carried.

We'll move to the reading of government motion 73.

We'll proceed to the vote on government motion 73. All those in favour of government motion 73? All those opposed? I declare government motion 73 to have carried.

We move now to the reading of government motion 74.

We'll move now to the vote on government motion 74. All those in favour? All those opposed? I declare government motion 74 to have been defeated.

We'll move now to the reading of government motion 75.

Mr. Jackson: Mr. Chairman, that was declared defeated?

The Chair: I did say that government motion 74 had been declared defeated, yes, Mr. Jackson.

We'll now move to the vote on government motion—

Ms. Wynne: Can I just ask a procedural question? Can we withdraw a motion in this process?

Mr. Jackson: Not now, because everything's been moved.

Ms. Wynne: Okay, fine. So defeating them—

Mr. Jackson: The motion said everything has to be moved.

Ms. Wynne: Our only option then, if we can't withdraw, is to defeat. So that's why. Okay. Thank you.

The Chair: Mr. Jackson is correct. Because of the order of the House, all motions have been deemed to have been moved by the member so specified.

We'll move now to the consideration of government motion 75. All those in favour? All those opposed? I declare government motion 75 to have been defeated.

We'll move now to the reading of government motion 76.

We'll move now to the vote.

Mr. Jackson: Recorded vote.

The Chair: This recorded vote will also therefore be deferred for consideration later, as are the next opposition motions: 77, 78, 79, 80, 81 and 82. Therefore, section 8 will not be considered en bloc at this time.

Section 8.1, NDP motion 83 is also deferred, as is PC motion 84, and as well the next three, 85, 86 and 87. None of those sections will be considered at this time.

For section 9, we have so far no proposals or amendments or motions coming forward, so we'll proceed to the vote in consideration of section 9.

Mr. Jackson: Can legislative counsel advise us that no other sections impact on section 9?

Mr. Ralph Armstrong: Ralph Armstrong, legislative counsel. I'm not aware of any such provision having impact. What's done in section 9, the striking out of "designated" and substituting "prescribed," is part of the overall approach in the act, where previously all designations were prescribed by—so now we're specifically providing that—I'm sorry, sir. This does not change what is currently in the legislation; it simply makes a designation by the word "prescription" instead of the word "designation." It still requires a regulation. There you go, sir.

The Chair: Is that to your satisfaction, Mr. Jackson?

Mr. Jackson: Yes, thank you very much.

The Chair: Thank you to legislative counsel.

We'll therefore move to the vote consideration. Shall section 9 carry? All those in favour? All those opposed? I declare section 9 to have carried.

We'll now move to consideration of section 10. All three motions are deferred, motions 88, 89 and 90. Therefore, we'll not consider that section at this time.

Section 11: Both motions deferred, 91 and 92. We'll not consider section 11 at this time.

Section 12: Motions 93 to 99 inclusive, all deferred, not considering at this time, as we are doing with section 12.

Section 12.1: NDP motion 100, as the next two, 101 and 102, deferred.

We have no motions or proposals for section 13. If it's the will of the committee, we will then proceed to the vote on section 13. Are there any clarifications sought with regard to that? Seeing none, we'll consider for vote section 13. All those in favour? All those opposed? I declare section 13 to have carried.

We'll move now to section 14. First motion presented, NDP motion 103, deferred.

1730

I now invite the committee to read government motion 104.

We'll now move to the consideration of vote on government motion 104. All those in favour? All those opposed? I declare government motion 104 to have carried.

We'll proceed now to section 15. I invite the committee to read government motion 105.

Mr. Fonseca: No, it's NDP.

The Chair: I'm sorry. NDP motion 105 is therefore deferred.

We'll move now to NDP motion 106 for the next section, 16, also deferred, as is NDP motion 107 for section 17, as is section 18, motion 108.

Section 19: Motions 109 to 112 inclusive, deferred.

I invite the committee to read government motion 113.

We'll proceed now to the vote on government motion 113. All those in favour? All those opposed? I declare government motion 113 to have carried.

I invite the committee to read government motion 114.

We'll proceed now to the vote on government motion 114. All those in favour? All those opposed? I declare government motion 114 to have carried.

I declare the next several opposition motions, 115 to 120 inclusive, to have been deferred.

We'll move now to the reading of government motion 121.

If members have had time to make their way through government motion 121, we'll proceed now to the vote. All those in favour of government motion 121? All those opposed? I declare government motion 121 to have carried.

I invite the committee to read through government motion 122.

The committee has read government motion 122. We'll now move to the vote. All those in favour of government motion 122? All those opposed? I declare government motion 122 to have carried.

I move now to the reading of government motion 123. Mr. Jackson?

Mr. Jackson: I just lament that we refer to pharmacy as an industry and not a profession.

The Chair: If the committee has had time to read through government motion 123, we'll move now to the vote. All those in favour of government motion 123? All

those opposed? I declare government motion 123 to have carried.

The next two opposition motions, 124 and 125, are deferred.

I invite the committee to read through government motion 126.

If there are no objections, we'll proceed now to the vote on government motion 126. All those in favour? All those opposed? I declare government motion 126 to have carried.

The next two opposition motions, 127 and 128, are deferred.

I invite the committee to read through government motion 129.

We'll proceed now to the vote on government motion 129. All those in favour? All those opposed? I declare government motion 129 to have carried.

We'll now go through the reading of government motion 130.

We'll move now to the vote on government motion 130. All those in favour? All those opposed? I declare government motion 130 to have carried.

We'll defer opposition motions 131 and 132.

I invite the committee to read through government motion 133.

We'll proceed now to the vote on government motion 133. All those in favour? All those opposed? I declare government motion 133 to have carried.

We will not be considering en bloc section 19 because of the deferred votes.

We move now to section 20. Both opposition motions, 134 and 135, are deferred.

We move now to the consideration of section 21: Opposition motion 136 deferred.

We move now to the consideration of section 22: NDP motion 137 deferred.

I invite the committee to read through government motion 138.

We'll move now to the consideration of government motion 138. All those in favour? All those opposed? I declare government motion 138 to have carried.

We'll defer opposition motions 139 and 140.

Section 22 will not be considered en bloc.

We'll move now to the consideration of section 23: Opposition motions 141, 142 and 143 deferred, as is consideration of section 23.

Section 23.1: Opposition motion 144 deferred, as is consideration for that section.

Section 24: NDP motion 145, as is section consideration, deferred.

We'll move now to consideration of section 25: NDP and Opposition motions 146, 147, and 148 deferred.

Opposition motion 149 for section 25.1 deferred.

Section 26: NDP motion 150 deferred, as is consideration for that section.

We'll now move to consideration of section 27: opposition motions 151 to 156, inclusive, deferred.

I invite the committee to read through government motion 157.

We'll proceed to the vote on government motion 157. All those in favour? All those opposed? I declare government motion 157 to have carried.

1740

Opposition motions 158, 159 and 160 deferred.

I invite the committee to read through government motion 161.

We'll now move to the vote on government motion 161. All those in favour? All those opposed? I declare government motion 161 to have carried.

Opposition motions 162 and 163 deferred.

Section 28: Opposition motions 164, 165 and 166 deferred.

I invite the committee to read through government motion 167.

Moving now to the consideration vote on government motion 167, all those in favour? All those opposed? I declare government motion 167 to have carried.

Opposition motions 168 and 169 deferred.

Opposition motions 170 and 171 deferred.

Consideration of section 29: Opposition motions 172, 173 and 174 deferred.

I invite the committee to read through government motion 175.

We'll move now to the consideration vote on government motion 175. All those in favour? All those opposed? I declare government motion 175 to have carried.

Opposition motions 176 and 177 deferred.

There are no proposed amendments, motions to date for section 30. If there are no further clarifications sought, we'll move directly to the vote on section 30. Seeing none, all those in favour of section 30? All those opposed? I declare section 30 to have carried.

I advise my fellow members of the committee that since government motions have now been dealt with, we are now at the juncture where we will consider opposition motions, all of which, as you've heard, are recorded votes. I ask the will of the committee: Shall we adjourn for dinner or shall we move immediately to consideration of the recorded votes, opposition motions?

Mr. Peterson: I suggest we work until 6 o'clock, and 7.

The Chair: We'll move directly to consideration of opposition motions.

NDP motion 33. If there are no clarifications sought, we'll move to the vote on NDP motion 33.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 33 to have been defeated.

We'll move now to the vote on PC motion 34. All these votes are recorded.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 34 to have been defeated.

We'll now consider section 4 en bloc, as amended. Shall section 4, as amended, carry? All those in favour? All those opposed? I declare section 4, as amended, to have carried.

Consideration of PC motion 36.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 36 to have been defeated.

PC motion 37.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 37 to have been defeated.

Shall section 5, as amended, carry? All those in favour? All those opposed? I declare section 5, as amended, to have carried.

We now move to the consideration of NDP motion 40.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare section 5.1, NDP motion 40, to have been defeated.

PC motion 41: Shall section 5.1, PC motion 41, carry?

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare section 5.1, PC motion 41, to have been defeated.
PC motion 42.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

1750

The Chair: I declare PC motion 42 to have been defeated.
NDP motion 44.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 44 to have been defeated.
PC motion 45.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 45 to have been defeated.
PC motion 46.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 46 to have been defeated.

Mr. Peterson: On a point of order, Mr. Chair: Can we consider these votes en bloc by section?

Mr. Jackson: He's already ruled on that. I tried to do that.

The Chair: We'll now move to consideration of—

Mr. Peterson: Even with a unanimous vote we can't do it? If we have a unanimous vote, he will consider it.

Mr. Jackson: I tried that an hour ago.

Mr. Peterson: We didn't understand that's what you were trying to do.

Mr. Jackson: Let's continue the way it is. The Chair has ruled that he didn't want to do unanimous consent, so we're not doing unanimous consent.

The Chair: These votes are going to be recorded individually.

We'll move now to consideration of NDP motion 47.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Ramal, Wynne.

The Chair: I declare NDP motion 47 to have been defeated.

We now move to consideration of PC motion 49.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Ramal, Wynne.

The Chair: I declare PC motion 49 to have been defeated.

We now move to consideration of NDP motion 50.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Ramal, Wynne.

The Chair: I declare NDP motion 50 to have been defeated.

PC motion 51.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Ramal, Wynne.

The Chair: I declare PC motion 51 to have been defeated.

Shall section 6, as amended, carry? All in favour? All opposed? I declare section 6, as amended, to have carried.

We move now to consideration of motion 52.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Ramal, Wynne.

The Chair: I declare PC motion 52 to have been defeated.

PC motion 53.

Mr. Jackson: I'd like everybody to read this one. I think it'd be totally unfair for the government not to have read this amendment before they reject it.

The Chair: Thank you, Mr. Jackson.

Interjection.

Mr. Jackson: They've read it.

The Chair: We'll move now to the vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 53 to have been defeated.

PC motion 54.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 54 to have been defeated.

PC motion 55.

Mr. Jackson: Can we recess so you can check on this one? I'm not even sure the minister's read this one.

The Chair: Mr. Jackson, do I take that as a formal request for a recess?

Mr. Jackson: No, I don't want one.

The Chair: Well proceed now to the vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 55 defeated.
NDP motion 56.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 56 to have been defeated.

PC motion 57.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 57 to have been defeated.

PC motion 58.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 58 to have been defeated.

PC motion 59.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 59 to have been defeated.

Shall section 7, as amended, carry? All those in favour? All those opposed? I declare section 7, as amended, to have carried.

Section 8: NDP motion 61.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 61 defeated.
PC motion 62.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

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The Chair: PC motion 62 defeated.
PC motion 63.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 63 defeated.
PC motion 64.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 64 defeated.
NDP motion 65.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 65 defeated.
PC motion 66.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 66 defeated.
NDP motion 67.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 67 defeated.
PC motion 68.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 68 defeated.
PC motion 69.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare PC motion 69 to have been defeated.
PC motion 70.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 70 defeated.
We'll go to government motion 76. Those in favour of government motion 76?
Ms. Martel: Recorded vote.
The Chair: These are all recorded votes.

Ayes

Fonseca, Kular, Peterson, Ramal, Wynne.

Nays

Jackson, Martel, Witmer.

The Chair: Government motion 76 carried.
PC motion 77.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 77 defeated.
PC motion 78.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 78 defeated.
NDP motion 79.
Mrs. Witmer: Let's sit until we get a motion passed.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 79 defeated.
PC motion 80.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 80 defeated.
NDP motion 81.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 81 defeated.
PC motion 82.

Mrs. Witmer: I'd like to just move it.

The Chair: All motions from your side, Ms. Witmer, have now been deemed to have been moved by you.

Mrs. Witmer: But I think it's particularly good.

The Chair: The committee notes your enthusiasm and welcomes it.

Ayes

Fonseca, Jackson, Kular, Martel, Peterson, Ramal, Witmer, Wynne.

The Chair: None opposed? I declare PC motion 82 to have carried.

Mr. Peterson: Point of order, Mr. Chair: Ms. Witmer said we could adjourn for dinner once we all agreed on a motion.

The Chair: Would the members like to recess to eat?

Mrs. Witmer: Sure.

Mr. Jackson: What else did you have in mind for us to do?

The Chair: Mr. Jackson, seeing as we're located in downtown Toronto, there is much.

Mr. Jackson: I could get caught up in my office; it would be a start.

Ms. Wynne: I'm concerned about other things that people may have to do, and I'm just thinking, it's not going to take us that long to get through these. Is it necessary that we—

Mr. Jackson: I could quote you the labour act. We have staff here. We could do any number of things.

Ms. Wynne: Okay.

The Chair: It's entirely the will of the committee. There is dinner available for committee members as we speak. We're available to be here to deliberate the rest of these motions. It's the will of the committee. I take it as—

Ms. Wynne: Well, for how long? How long are we talking about?

Mr. Jackson: Do you want me make it simple and call a 20-minute recess?

Ms. Wynne: Good idea.

The Chair: All right. This committee—
Interjections.

The Chair: We'll make it 30 minutes.

This committee stands recessed for 30 minutes. To be clear, we're expected back at 6:35 or so.

The committee recessed from 1806 to 1841.

The Chair: I call the committee back from recess. Before moving to consideration of the next motion, I'm informed by the clerk that there is a provision for same vote, which means that we will still have to go through each motion individually—for example, 82, 83 and 84—but instead of holding up the committee's time to record

each vote individually, we can assume that it is the same vote, if agreeable to the committee. Can I take some direction?

Mr. Fonseca: Yes.

Mr. Jackson: Usually it rests with the person who requested it.

The Chair: All right. May I take that as the will of the committee then?

Mr. Jackson: Let's move along. We were holding out for cake, anyway.

The Chair: So let's officially begin the vote. This is a vote as previously. Shall section 8, as amended, carry? All those in favour? All those opposed? I declare section 8, as amended, to have carried.

Now we can introduce, if it's the will of the committee, and I take it it is—

Interjection.

The Chair: All right. We're going to record this vote and then assume this will be the vote repeated for the rest of the votes.

Ms. Wynne: Unless we say no.

Mr. Jackson: If you call the vote and then, with an NDP motion, Shelley has the option to say, "Same vote," and when a Tory one is up, I'll say, "Same vote," and we'll keep it simple—

Ms. Wynne: And we'll say no.

Mr. Jackson: —as opposed to you dancing around with this as per our previous agreement.

The Chair: Thank you, Mr. Jackson. Agreed.

So we'll move now to consideration of section 8.1, NDP motion 83. All those in favour? We need one vote right now to establish the numbers.

Mr. Jackson: But Elizabeth isn't here yet.

The Clerk of the Committee: We can change it later.

Mr. Jackson: Fair enough.

Ayes

Jackson, Martel.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 83 to have been defeated. So now we've got our numbers for the same vote, which can be adjusted.

PC motion 84.

Mr. Jackson: Same vote.

The Chair: Is that agreed? Same vote.

NDP motion 85.

Interjection.

The Chair: We have an objection to the same vote. We'll proceed to the actual recorded vote. NDP motion 85.

Ayes

Fonseca, Jackson, Kular, Martel, Ramal, Wynne.

The Chair: I declare NDP motion 85 to have been carried.

NDP motion 86, section 8.3.

Ms. Martel: Okay, same vote.

Mr. Jackson: You'll have to call the vote until we establish it.

The Chair: All those in favour of NDP motion 86?

Ayes

Jackson, Martel.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 86 to have been defeated.

We'll now move to NDP motion 87.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 87 to have been defeated.

We'll move now to section 10, PC motion 88.

Mr. Jackson: Same vote.

The Chair: The committee is agreeable to same vote? Same vote.

Mr. Jackson: You have to declare it's defeated, Mr. Chairman.

The Chair: PC motion 88 defeated.

NDP motion 89.

Ms. Martel: Same vote.

The Chair: Same vote. I declare NDP motion 89 to have been defeated.

PC motion 90.

Mr. Jackson: Same vote.

The Chair: I declare PC motion 90 to have been defeated.

Shall section 10 carry? This is just a hand vote. All those in favour? All those opposed? Section 10 carried.

Section 11: NDP motion 91.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

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The Chair: I declare NDP motion 91 to have been defeated.

PC motion 92.

Mr. Jackson: Same vote.

The Chair: PC motion 92 defeated.

Shall section 11 carry? Hand vote. All those in favour?

All those opposed? I declare section 11 to have carried.

Section 12: NDP motion 93. Any proposal for same vote?

Ms. Martel: No.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: I declare NDP motion 93 to have been defeated.

NDP motion 94.

Ms. Martel: Same vote.

The Chair: NDP motion 94 defeated.

NDP motion 95.

Ms. Martel: Same vote.

The Chair: Defeated.

PC motion 96.

Mrs. Witmer: Same vote

The Chair: Defeated.

PC motion 97.

Mrs. Witmer: Same vote

The Chair: PC motion 97 defeated.

PC motion 98.

Interjections.

The Chair: PC motion 98, same vote, defeated.

NDP motion 99.

Ms. Martel: Same vote.

The Chair: NDP motion 99 defeated.

Shall section 12 carry? Hand vote. Those in favour?

Those opposed? Section 12 carried.

This will be a recorded vote on NDP motion 100.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 100 defeated.

PC motion 101.

Mrs. Witmer: Same vote.

The Chair: PC motion 101 defeated.

PC motion 102.

Mrs. Witmer: Same vote.

The Chair: PC motion 102 defeated.

NDP motion 103.

Ms. Martel: Same vote.

The Chair: NDP motion 103 defeated.

Shall section 14, as amended, carry? Hand vote. Those in favour? Those opposed? Section 14, as amended, carries.

Section 15: NDP motion 105.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 105 defeated.

Shall section 15 carry? Hand vote. All those in favour?

All those opposed? Section 15 carries.

Section 16: NDP motion 106.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 106 defeated.

Shall section 16 carry? Hand vote. All those in favour?

All those opposed? Section 16 carries.

Section 17: NDP motion 107.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 107 defeated.

Shall section 17 carry? Hand vote. All those in favour?

All those opposed? Section 17 carries.

Section 18: NDP motion 108.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 108 defeated.

Shall section 18 carry? Hand vote. Those in favour?

Those opposed? Section 18 carries.

Section 19: PC motion 109.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 109 defeated.

PC motion 110.

Mrs. Witmer: Same vote.

The Chair: Same vote. PC motion 110 defeated.

PC motion 111.

Mrs. Witmer: Same vote.

The Chair: Defeated.

NDP motion 112.

Ms. Martel: Same vote.

The Chair: NDP motion 112 defeated.

NDP motion 115.

Ms. Martel: Same vote.

The Chair: Motion 115 defeated.

PC motion 116.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 117.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 118.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 119.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 120.

Mrs. Witmer: Same vote.

The Chair: NDP motion 124.

Ms. Martel: Same vote.

The Chair: NDP motion 124 defeated.

PC motion 125.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 127.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 128.

Mrs. Witmer: Same vote.

The Chair: Defeated.

NDP motion 131.

Ms. Martel: Same vote.

The Chair: Defeated.

PC motion 132.

Mrs. Witmer: Same vote.

The Chair: Shall section 19, as amended, carry? Hand vote. Those in favour? Those opposed?

Section 19, as amended, carries.

Section 20: NDP motion 134.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 134 defeated.

PC motion 135.

Mrs. Witmer: Same vote.

The Chair: Same vote. Motion 135 defeated.

Shall section 20 carry? Hand vote. Those in favour? Those opposed? Section 20 carries.

Section 21: NDP motion 136.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 136 defeated.

Shall section 21 carry? All those in favour? Those opposed? Section 21 carries.

Section 22: NDP motion 137.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 137 defeated.

PC motion 139.

Mrs. Witmer: Same vote.

The Chair: Same vote. PC motion 139 defeated.

PC motion 140.

Mrs. Witmer: Same vote.

The Chair: Same vote. Defeated.

Shall section 22, as amended, carry? Hand vote. Those in favour? Those opposed? Section 22, as amended, carries.

Section 23: PC motion 141.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 141 defeated.

NDP motion 142.

Ms. Martel: Same vote.

The Chair: Motion 142 defeated.

NDP motion 143.

Ms. Martel: Same vote.

The Chair: NDP motion 143 defeated.

Shall section 23 carry? Hand vote. Those in favour?

Those opposed? Section 23 carries.

Section 23.1: PC motion 144. Recorded vote.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 144 defeated.

Section 24: NDP motion 145.

Mr. Jackson: Same vote.

The Chair: Do I take it, the same vote on this? No.

Recorded vote.

The Clerk of the Committee: Same vote. No, the one before was. The one before was a motion—section 23.1. It was motion 144.

The Chair: NDP motion 145.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 145 defeated.

Shall section 24 carry? Those in favour? Those opposed? Section 24 carries.

Section 25: NDP motion 146.

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: NDP motion 146 defeated.

PC motion 147. Same vote?

Mrs. Witmer: Yes.

The Chair: Same vote. PC motion 147 defeated.

PC motion 148.

Mrs. Witmer: Same vote.

The Chair: PC motion 148 defeated.

Shall section 25 carry? Hand vote. Those in favour?

Those opposed? Section 25 carries.

Shall section 25.1, PC motion 149, carry?

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: Motion defeated.

Section 26, NDP motion 150.

Ms. Martel: Same vote.

The Chair: Motion 150 defeated.

Shall section 26 carry? Hand vote. Those in favour?

Those opposed? Section 26 carries.

Section 27: PC motion 151

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: Motion 151 defeated.

NDP motion 152.

Ms. Martel: Same vote.

The Chair: Same vote. Motion 152 defeated.

PC motion 153.

Mrs. Witmer: Same vote.

The Chair: Motion 153 defeated.

PC motion 154.

Mrs. Witmer: Same vote.

The Chair: Motion 154 defeated.

NDP motion 155. Same vote?

Ms. Martel: Yes.

The Chair: Motion 155 defeated.

NDP motion 156.

Ms. Martel: Same vote.

The Chair: Motion 156 defeated.

PC motion 158.

Mrs. Witmer: Same vote.

The Chair: Motion 158 defeated.

PC motion 159.

Mrs. Witmer: Same vote.

The Chair: Defeated.

NDP motion 160.

Ms. Martel: Same vote.

The Chair: Defeated.

Shall section 27, as amended, carry? Hand vote. All those in favour? Those opposed? Section 27 carries.

Shall section 27.1, PC motion 162, carry?

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: Motion 162 defeated.
NDP motion 163.

Ms. Martel: Same vote.

The Chair: Motion 163 defeated.
Section 28, PC motion 164.

Mrs. Witmer: Same vote.

The Chair: Motion 164 defeated.
NDP motion 165.

Ms. Martel: Same vote.

The Chair: Defeated.

PC motion 166.

Mrs. Witmer: Same vote.

The Chair: Defeated.

NDP motion 168.

Ms. Martel: Same vote.

The Chair: Defeated.

PC motion 169.

Mrs. Witmer: Same vote.

The Chair: Defeated.

Shall section 28, as amended, carry? Hand vote. Those
in favour? Those opposed? Section 28 carries.

Shall section 28.1, PC motion 170, carry?

Ayes

Jackson, Martel, Witmer.

Nays

Fonseca, Kular, Peterson, Ramal, Wynne.

The Chair: PC motion 170 defeated.

Section 28.2: PC motion 171.

Mrs. Witmer: Same vote.

The Chair: Defeated.

Section 29: PC motion 172.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 173.

Mrs. Witmer: Same vote.

The Chair: Defeated.

NDP motion 174.

Ms. Martel: Same vote.

The Chair: Defeated.

PC motion 176.

Mrs. Witmer: Same vote.

The Chair: Defeated.

PC motion 177.

Mrs. Witmer: Same vote.

The Chair: Defeated.

Shall section 29, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 102, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? All
in favour? All opposed? Carried.

As the last item of business, seeing none before the
committee, we wish Mr. Peterson a happy birthday and
many happy returns.

This committee stands blessedly adjourned.

The committee adjourned at 1901.

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Official Report of Debates (Hansard)

Monday 21 August 2006

Journal des débats (Hansard)

Lundi 21 août 2006

**Standing committee on
social policy**

Clean Water Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur l'eau saine

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 21 August 2006

Lundi 21 août 2006

The committee met at 0905 in committee room 1.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Acting Chair (Mr Ernie Parsons): Good morning. We are calling to order the standing committee on social policy to deal with Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts.

I am a very temporary Acting Chair until the Chair arrives, so bear with me. It is clear they do not select Acting Chairs on the basis of looks.

SUBCOMMITTEE REPORT

The Acting Chair: It being 9 a.m., the first item is the report of the subcommittee on committee business, and I would ask for a motion.

Ms. Kathleen O. Wynne (Don Valley West): I'd like to move the report of the subcommittee, Mr. Chair. I'll just read the subcommittee report.

Your subcommittee met on Wednesday, July 5, 2006, to consider the method of proceeding on Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts, and recommends the following:

(1) That the committee intend to meet from 9 a.m. to 4:30 p.m. in Toronto, Walkerton, Cornwall, Bath and Peterborough the week of August 21, 2006, for the purpose of holding public hearings.

(2) That, at the discretion of the subcommittee, teleconferencing be utilized to hear from witnesses unable to appear in person.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the major Toronto English dailies and certain Toronto French weeklies for one day during the week of July 24, 2006, and that an advertisement also be placed on the OntParl channel and the Legislative Assembly website.

(4) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the local papers of Walkerton, Cornwall, Bath and Peterborough for two days during the week of July 24, 2006, and that the advertisements be placed in both English and French papers, if possible.

(5) That the committee clerk, with the authorization of the Chair, post information with any other mediums of advertising deemed acceptable to the subcommittee.

(6) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Tuesday, August 8, 2006.

(7) That in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 6 p.m. on Tuesday, August 8, 2006.

(8) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Thursday, August 10, 2006.

(9) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members, if necessary.

(10) That the Minister of the Environment be invited to appear before the committee at 9 a.m. on Monday, August 21, 2006, to make a presentation of up to 15 minutes and field questions from each caucus for up to five minutes each.

(11) That the deadline for written submissions be 5 p.m. on Monday, August 28, 2006.

(12) That the research officer provide a summary of the presentations by Monday, September 4, 2006.

(13) That, for administrative purposes, proposed amendments be filed with the clerk of the committee by 12 noon on Wednesday, September 6, 2006.

(14) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, September 11, 2006, and Tuesday, September 12, 2006, from 10 a.m. to 4 p.m., as required.

(15) That consideration for witness reimbursement be determined by the unanimous agreement of subcommittee on a case-by-case basis.

(16) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Acting Chair: Thank you, Ms. Wynne. Any discussion? Those in favour? Those opposed? It's carried.

The report of the subcommittee that has just been adopted provides for the Honourable Laurel Broten to have 15 minutes.

Please proceed.

MINISTRY OF THE ENVIRONMENT
MINISTÈRE DE L'ENVIRONNEMENT

Hon. Laurel C. Broten (Minister of the Environment): Thank you very much, and good morning, everyone. I very much welcome the opportunity to speak to you today about the proposed Clean Water Act.

Let me begin by thanking all of the members of the standing committee for your time and what I know will be very thoughtful consideration of the proposed bill.

This is such an important piece of legislation, and I'm really proud to have been able to put forward a bill that will have a profound and lasting impact on our quality of life in this province.

0910

My meetings with people across Ontario have only reinforced for me that this is a valuable endeavour that addresses a real need. This legislation will empower communities, so it is especially important and appropriate that the bill has been shaped by so many able hands. Ministry staff and I have met with more than 300 groups—mayors, farmers, First Nations, conservationists, business leaders and others—and clearly, we all agree on the fundamental principles underlying the proposed Clean Water Act, and that is that all people deserve to have a supply of safe, clean drinking water. This is a fundamental right, and it goes beyond the protection of our health. It helps ensure our quality of life. Municipalities are both the deliverers and the beneficiaries of clean, safe drinking water, and it is time that they were given a larger voice on how to protect it. Their role is more than just important; it's essential. And we intend to give them that voice.

The challenge before us is, how do we get where we need to be? To ensure that our water is protected and plentiful, Justice O'Connor recommended a multi-barrier approach. The proposed Clean Water Act fulfills one major component of that multi-barrier approach: prevention. Over the next week, as you hear from many presenters, please keep in mind that the Clean Water Act will be highly effective at prevention. But it is not designed to do everything. There is no one tool that alone will protect our water. The act would work in concert with better treatment, monitoring, inspections, certification and training of system operators to deliver a comprehensive and protective system.

I look forward to hearing the presentations. Many of the people and groups you will hear from have been very involved in source protection efforts, and it's important that you learn from their excellent work. I believe that

you will hear a universal message: Treatment alone is not enough; prevention is key to keeping our water safe.

This legislation sets prevention above all else as its fundamental principle. Preventing problems from occurring in the first place is far better than having to fix them after the fact. We believe that communities are best positioned to decide what protective measures are needed, how best to carry them out, and who should lead the efforts. We owe it to all people of Ontario to make sure that what happened in Walkerton never happens again. In his report of the Walkerton inquiry, Justice O'Connor made it clear that the precautionary principle must play an integral role in decisions affecting the safety of drinking water. The proposed Clean Water Act is inherently precautionary, and as regulations are developed under the act, we will be mindful of that precautionary principle.

The Clean Water Act is precautionary because it is proactive. Communities will look at vulnerable sources of drinking water and evaluate potential threats. The source protection plans would propose measures to reduce those threats. Under the act, watershed communities would monitor and evaluate how threats are being reduced and prevented. Source protection plans would be reviewed and amended over time to respond to new threats and to better protect against existing threats. The Clean Water Act would ensure that people in communities across the province can protect their drinking water supplies from getting contaminated through locally driven, science-based source protection plans. If communities are going to be able to make decisions about protecting their drinking water sources, those decisions need to be based on the best available science and made in consultation with their community.

Nous croyons que ce sont les collectivités locales qui sont les mieux placées pour décider des mesures de protection à prendre, de la façon de les appliquer et des personnes qui doivent s'en occuper. Si les collectivités prennent des décisions pour protéger les sources d'eau potable, ces décisions doivent se fonder sur les meilleures données scientifiques possibles et doivent être prises en consultation avec la collectivité.

For some communities, it would be the first time they would be able to identify potential threats to their drinking water systems and develop plans to address them. For others, it would be a continuation of work they have already done. Up until now, any community that wanted to take a preventive approach was essentially working in isolation. By looking at the entire shared watershed, we're ensuring that information gets shared, planning is aligned and threats are dealt with before they become serious problems. We recognize the good work that has already been done by municipalities and conservation authorities. Each plan should be built on the progress that has already been made at the local level.

The magnitude of what's being accomplished here is truly remarkable. We are well into the largest scientific exercise we have ever undertaken to find out how much water we have and how clean and protected it is. This has never been done before in the history of our province. To

effectively protect our supplies of drinking water, we need to know how much we have in reserve, how it replenishes itself and what poses a threat to our supply.

Right now across Ontario, conservation authorities and municipalities are using leading-edge research and technology to build comprehensive maps of our surface and groundwater resources. To give watershed plans the strongest possible scientific foundations, our government anticipates providing \$120 million to help communities and their partners across Ontario study and assess their watersheds, undertake water budgets and get the science right. There will be implementation costs; we know this. We can't predict what they will be for each community because every region has its own characteristics and challenges.

This is actually one of the great strengths of the Clean Water Act. Instead of trying to design one central model that forces pegs into holes, we're listening to the communities themselves to tell us what it will take to implement. Local planning teams will need to look at their findings, the technical studies and the risk assessments for each source protection planning area along with each vulnerable area that's been defined by the scientific research and technical data.

While it is impossible to anticipate exactly what the implementation costs will be for every community right now, we have two excellent examples of what can be accomplished. Waterloo region and Oxford county were early advocates of source protection planning and are now implementing plans they've developed to protect their drinking water sources. These costs have been quite manageable and moderate. Costs to homeowners in these communities have ranged from approximately 75 cents a month for a household in Waterloo county to around \$1.50 a month in Oxford county.

We know there may be some hardship cases. That's why we're considering a safety net approach that will address each specific hardship situation on a case-by-case basis. We welcome further discussion with all of our stakeholders once this becomes clear and communities have considered the balance between who can contribute to source protection and who benefits at the local level.

Since we first brought forward this legislation, I have had the opportunity to visit many communities around the province. I have spoken with people about the Clean Water Act and heard their views about how we can best protect our drinking water. I've seen excellent local efforts first-hand, and whether I was speaking to the mayor of North Bay or the councillors of Essex county or farm groups in Waterloo or conservation authority staff in Belleville, the message I heard was consistent: People everywhere agree that water protection must be seen as a shared responsibility, and the most effective way to protect local water is through local involvement.

We have heard from Ontario's First Nations that they must have access to safe sources of drinking water. Where First Nation communities wish to participate in the process, we are considering amendments to the legislation that would ensure that First Nation drinking water systems can be protected under Bill 43.

We have also heard a number of good suggestions from the honourable members of the Legislature during the debate following second reading. This feedback is useful as we consider amendments that will make this bill better.

One of the amendments we're considering would let a local community have the option of negotiating risk management plans to address significant drinking water threats. Instead of permits, we intend to create risk management tools. This comes directly from advice we received during consultations and should address many of the questions that we heard.

We will introduce changes that will require officials and inspectors to have a specified set of qualifications, including training in biosecurity and the appropriate health and safety protocols, in order to be appointed to their jobs. These are a few of the ideas we have developed in response to stakeholder suggestions that will make this important bill even better.

0920

Many of our efforts and investments up to now have focused on groundwater. The Clean Water Act will also benefit the millions of Ontarians, including people in our largest cities and most developed industrial areas, who draw their water from the Great Lakes. The implementation of source protection plans within watersheds that drain into the Great Lakes will help protect the Great Lakes, which supply 70% of Ontario's population with their drinking water.

Our government is doing a lot to protect the Great Lakes: supporting conservation measures and sustaining and protecting our valuable water resources. The recent Great Lakes Charter Annex agreement strengthens the protection of the Great Lakes by banning diversions and promoting conservation on both sides of the border. The Clean Water Act would add to this by letting us set water quality and quantity targets for the source protection areas that feed the Great Lakes. It's a fundamental part of the bigger picture on protecting our water from contamination and depletion. We believe locally driven, developed and delivered source protection plans are the best way to protect our community drinking water sources in the long term.

I look forward to hearing from all of our municipal partners as we move forward with Bill 43. Let's take this opportunity to work together as stewards of our environment and protectors of our valuable water resources. I want to take this time to thank everyone who has prepared submissions and taken the time to appear. I look forward to hearing your good ideas in the week to come. Thank you.

The Acting Chair: Thank you, Minister. Each of the three caucuses has up to five minutes for questions. We will start with the official opposition.

Ms. Laurie Scott (Haliburton-Victoria-Brock): Thank you very much, Madam Minister, for appearing before us today on this very important bill, and to all the stakeholders who have applied to appear before our committee over the week and, we hope, longer.

I have some questions that for you on the Clean Water Act, source water protection. In Justice O'Connor's report, he said there didn't need to be an extra layer of bureaucracy, some more legislation brought in, but that the ministry actually did have the power under the Ontario Water Resources Act, section 33. It was in section 68 that Justice O'Connor said that.

I want to ask directly, is the ministry simply downloading some costs and liabilities to the municipalities and the landowners? To be honest—I know you've heard a lot of submissions and you're going to hear some more—we want a partnership with the municipalities. The PC Party, our caucus, all want clean water, but we want to get there in a co-operative manner, not in what we feel is like a dictatorship within this legislation.

Is the province actually evading responsibility for clean water by setting this legislation up with no funding that we know of for municipalities and the landowners for implementation? You mentioned a hardship fund that may kick in. Do you have any limits? What's the cut-off point? Is it \$2 a month? It's a financing question that I ask you about.

Has the province done any cost-impact analysis? I realize that you said each municipality is going to be treated on the basis of what they have implemented in infrastructure now. I can speak for rural Ontario that the infrastructure needs are great. So have you done any cost analysis and could this legislation not have been done within the existing legislation that I previously mentioned?

Hon. Ms. Broten: That was a very long question. Let me start and break it down and answer on a few of the points you made.

Justice O'Connor, in his recommendations, made reference to the legislation that empowered MOE, the Ministry of the Environment, my ministry, to take action. The Ontario Water Resources Act empowers the Ministry of the Environment to undertake some work. But what we found as we talked to communities and built on the concept of precaution and prevention was that those out in communities right across this province all have different issues. Their drinking water comes from different sources; they have different challenges, whether they are industrial, whether they are agriculture-based, whether they are large populations, remote, small.

As we travelled the province, we found that we needed to have locally driven, science-based information coming forward. The Clean Water Act empowers the source protection committees and that brings that local perspective, that local knowledge base. It allows municipalities, which up until the Clean Water Act had no mechanism, to require that work be done, require that something take place to protect their source of municipal drinking water. Their hands were tied. They couldn't work across the watershed boundary; they were limited to their own municipal jurisdiction. Those are the concepts which Justice O'Connor indicated the province needed to tackle to ensure that we didn't have another situation where we were not preventing something from happening but rather we were managing it after the fact.

The structure that's been put in place under the Clean Water Act, or is proposed to be put in place under the Clean Water Act, brings together those who need to be brought together at a local table to manage the local situation, who are knowledgeable and who will bring that expertise. That is the structure of the legislation.

Let me just respond to your questions about implementation costs. As I said in my opening remarks, the best advice and expertise that we have received is from some of those communities in our province that are out in front and have done some of this work already. We've been able to see in those communities—Waterloo and Oxford, which are quite different in many respects. One is fairly industrial and one is agricultural—a good mix—so they've given us a good cross-section of what we might examine across the province. We've seen very moderate, manageable costs come forward.

That being said, I think it's very important to acknowledge that the big cost right now is the scientific exercise that we're undertaking. The province has paid for that scientific exercise because it's critical. We need to collect that information and support our municipalities and conservation authorities as they do that. As I said, we expect to expend some \$120 million on that exercise. Once communities have identified those threats that exist, the hardship will be defined in concert with SWSSA, the Sustainable Water and Sewage Systems Act. The Clean Water Act hardship fund, hardship concept, that is going to be put in place will respond on those on a case-by-case basis, because when we—

The Vice-Chair (Mr. Khalil Ramal): Thank you, Minister. I've just been instructed about the timing.

Hon. Ms. Broten: Oh, okay.

The Vice-Chair: Now Mr. Tabuns for five minutes. I'm sorry, I just came in—

Hon. Ms. Broten: He's back and he's mean.

Mr. Peter Tabuns (Toronto-Danforth): Cruel but fair.

Minister, thanks for appearing before us this morning. The first question I have for you is, if this act had been in place when approval for the big pipe had been sought, whether this act would have prevented the construction of the big pipe.

Hon. Ms. Broten: I'm not going to speculate as to what might have happened in the past, but let me talk to you a little bit about—there certainly have been a lot of lessons learned with respect to dewatering and 16th Avenue in particular. As we move forward in that region, the big pipe is responding to concerns by the medical officer of health, who had raised a very serious alarm that sewage is going to back up into homes and businesses if that system was not upgraded. That is to meet approved growth that was approved many years ago, in fact, under the NDP government. So it's a critical issue, and that in and of itself would be something that would need to be examined by that community.

As we move forward right across the province, the Clean Water Act brings that preventive analysis. It does not replace every other protective measure that's in place.

The work that the MOE is responsible for, the work that municipalities are responsible for as they move forward and build their infrastructure, all that stays in place. Those critical components of examining how we meet a critical need in a community, of ensuring that they have a sewage system that meets their needs, how we manage infrastructure that is going into an area where perhaps some of the science was not as clear initially—I think we see, as we now move forward with 19th Avenue, that a lot of lessons have been learned. We've seen dewatering reduced on 16th Avenue as well, by some 57% reduction of water taking at that time.

So all of those layers remain: water-taking permits, certificates of approval, roles and responsibilities of the province and the municipality. Then built on top of that is an added layer of prevention and protection, where your source water protection committee would have examined those threats.

0930

Mr. Tabuns: Okay.

Hon. Ms. Broten: Again, not to speculate, they may have identified the sewage issue as a concern in their community, and rightly so; the medical officer of health also did.

Mr. Tabuns: I appreciate that you can't speculate deep into the past. How about the future? Can you tell us that this act would prevent such further development along the lines of a big pipe in the future?

Hon. Ms. Broten: Well, again, as I said, it's not something that I can speculate on as to what would have happened in the past or what would happen in the future. I don't sit as the decision-maker or the identifier of what are significant threats to drinking water. The concept, and I think the critical component, as the Ministry of the Environment examines a variety of issues that need to be examined as the York-Durham sewage system expansion continues—they are governed by the best available science, and decisions are being made on the basis of science: How can we ensure that water is protected and safe at the same time as responding to a critical infrastructure need for that part of our province?

The Clean Water Act decisions and the source protection committee will also be making their decisions based on the best available science. That's why science is being collected as we move forward: to identify those significant threats and to require significant threats to municipal drinking water to be examined. Although I do not sit as the decision-maker, that gives me comfort in that making decisions on the best science is always going to lead us, in my view, to a protective and a preventive best decision.

Mr. Tabuns: Why doesn't this bill include provision for water-taking fees as a way of protecting quantity and financing the sorts of protective investments we need?

Hon. Ms. Broten: As I said at the outset, this is a very important and, I think, great bill, but it does not contain every provision with respect to water that might ever exist. Water-taking charges is something that is an important examination. Water-taking permits was some-

thing that Minister Dombrowsky made headway on immediately upon becoming minister. Water-taking charges is something that we will be making headway on ourselves. But not every issue is examined in this preventive, foundational piece of legislation.

The Vice-Chair: Ms. Wynne.

Ms. Wynne: Thank you, Minister, for being here. I know, as a Toronto member, it's really important that we're able to, as a government, demonstrate that we have implemented the recommendations of the O'Connor report and that we understand how important clean water is across the province. I actually had the privilege on Friday of being in Perth-Middlesex and talking to a number of farmers. I know that these issues are paramount to them.

I'm wondering if you can talk a little bit about how we're going to be working with farmers through risk-management plans. You mentioned that in your opening remarks. Can you just talk about how that will work?

Hon. Ms. Broten: One of the issues and concerns and queries I've heard as I travelled the province was the concern about those folks coming through onto farmers' property not being knowledgeable about biosecurity and the threats that our agricultural sector needs to respond to in our current climate. So as I indicated in my opening remarks, one of the amendments that we're considering is to very much put in certainty as to the qualifications of those who will be seeking entrance onto our agricultural farms and onto our farm operations. I think that's a critical component.

The other issue is that I recognize, and I know that all committee members will join me in this, that our farming communities are incredible stewards of our water. They are incredible stewards of our province. We want to build upon the work that they have done, because in communities right across this province we have leaders in the work of how do we ensure that we have clean, safe drinking water; how do we ensure that we have farm operations managed in a sustainable way, that their cattle are safe, that they are safe? They are drinking that water in their homes and in their communities. So we seek to build upon the work that farmers will have already done and to work with them as we move forward in this co-operative and holistic examination of what threats exist to municipal drinking water. Let's bring those folks to the table, along with their municipal partners and along with other interested individuals in that community, to ensure that everyone in that community has clean, safe drinking water. That's a really important imperative under the legislation.

Ms. Wynne: I have just a final question. The member for the third party was talking about a planning decision that was made a number of years ago that then had an impact on the way sewage needed to be dealt with. As I was reading the legislation, my understanding is that this act will take primacy over other acts and that the OMB, for example, will have to take into account these plans. Could you just clarify the interrelationship between planning decisions and the safe water plans?

Hon. Ms. Broten: The conflict provisions under the legislation are that whatever legislation is most protective of drinking water will have supremacy. In most instances—in my view, in all instances—that will mean the Clean Water Act will have supremacy. However, it's important to acknowledge that there may be some other component, some other piece of legislation that will have protective measures over drinking water in that instance. An open approach, whatever is most protective of drinking water, will have supremacy. That will give a critical tool—an examination, as you've indicated—to layer decision-making and to have additional considerations brought to bear under the planning context, for example.

Understanding in a planning context that what is under the ground in terms of groundwater needs to be considered as we move forward with decisions being made by a number of different bodies or joint bodies, as it may be, is so important and is really a tool that has been lacking across the province. We have heard that point, as we have areas that are sort of the hot-button, problematic areas in the province. Some folks have said, "We don't have the tools that we need to be able to make that preventive, protective decision." That's what the Clean Water Act gives them.

The Vice-Chair: Thank you, Minister.

Hon. Ms. Broten: Thank you very much.

The Vice-Chair: I've been instructed by the clerk to stick to the time. I believe that we have many people who are going to speak to the committee.

DUFFERIN AGGREGATES, ST. LAWRENCE CEMENT

The Vice-Chair: Now we move to the second part of our day. We invite Dufferin Aggregates, St. Lawrence Cement, Bill Galloway.

Mr. Galloway, you have a partner with you today, so could she state her name? You have 15 minutes—10 minutes; I'm sorry. You can speak all the way through the 10 minutes or you can divide them between a statement and opening the floor up for questions from the three parties who are present today with us.

The Clerk of the Committee (Mr. Trevor Day): There will be five minutes of questions after.

The Vice-Chair: I'm sorry. Ten minutes of statement and five minutes of questions—my apologies.

You can start, Mr. Galloway.

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Mr. Bill Galloway: It's a pleasure to be here today. Thank you for allowing us to speak before you.

With me is Andrea Bourrie. She's our property and resources manager with Dufferin Aggregates. Andrea has a registered professional planning designation and is a member of the Canadian Institute of Planners. She is responsible within Dufferin and St. Lawrence to manage our planning issues, and is very well attuned to the interrelationships between our planning, permitting and

operational mandates. Andrea has been following Bill 43 since its inception.

Initially, starting off a little bit about Dufferin Aggregates, we provide 60% of our product, crushed stone, to the GTA. We employ over 400 people. We've identified the number of operations we have in the province. We operate from London through Cayuga, down through Hamilton, as far east as Clarington, and up in the Brechin area. Our main hub of operations is in Halton region, with our Milton/Acton quarries. We're also very active in the municipality of Puslinch.

We have successfully rehabilitated our quarries and our sand and gravel operations into naturalized states: wetlands, lakes and forested slopes. We have a water-based system at our Milton quarry, which will eventually be controlled by the conservation authority.

We've been a partner in the community for over 40 years and have a strong record of water management and stewardship of our resources in the communities that we work with. We're very supportive of the government's plan for clean drinking water. It's essential for human health. We do believe, as Justice O'Connor recommended, that the responsibility lies with the province for water resources, and we again believe that it's very important that this has a scientific base in its implementation and management.

Aggregates are a handler of water rather than a consumer of water, and our Golder study that was presented in 2004 indicates that that is the case. As little as 10% of our water actually leaves our sites; 90% of our water is actually returned to the water table within the site that we operate in.

With quarry dewatering, virtually all the water stays in the local watershed. Aggregate is really a crushing and screening process with rock, and we also wash it to get some of the fine, particulate matters off the product. There are absolutely no chemicals added to the product or to the water. Water is used on the site for our wash plants and for dust control. All of the water that we use for those purposes is recycled.

We're a very highly regulated industry. There are 25 federal and provincial acts that govern us. Groundwater and surface water are intensively studied under the Aggregate Resources Act and the Planning Act prior to licensing, and the minister has the opportunity to advise or request changes to our existing permitting and the existing approvals under the ARA.

The water-taking process is a very strong element of the province's control over the amount of water that is taken, and that process is managed through the MOE, and fuels and lubricants through a TSSA process. All of the water that is discharged is monitored and controlled. It is governed under the Ontario Water Resources Act for both quality and quantity. Of course, the EPA determines exactly what can and cannot be brought into an existing quarry or pit. The government itself has actually gone through and monitored pits and quarries throughout the province and determined that there is no threat to drinking water in our operations.

We believe that our industry, and Dufferin Aggregates, if we are properly managed operations, can advance the clean water objectives.

There's an example cited at Bellwood quarry in Atlanta, Georgia, which is going to be the site of a 1.9-billion-gallon west-side drinking water reservoir. I've attached some information on that in appendix 5. We also have examples of this in other jurisdictions, in Colorado, where quarries are used for drinking water. The GRCA in our own jurisdiction has Belwood Lake in Centre Wellington, which is a reservoir storage area within the watershed.

Our rehabilitation plans have been so successful that people don't even know that there have been pits and quarries—the botanical gardens, the Kelso recreation centre. In fact, as we all watched TV during the Sydney Olympics and looked at the rowing course and the kayakers going down whitewater rafting, none of us realized that in fact that was an existing sand and gravel operation and that it was a rehabilitated area that was being used for these venues. So we feel our aggregate operations contribute to the preservation of green space and our water resources.

We do have concerns. We fully support the objective of ensuring a clean supply of drinking water to meet the needs of all Ontarians, and we support the retention of ultimate responsibility by the province for water resources, as Justice O'Connor recommended. Science is an important part of water management and an important part of managing drinking water, and we of course support that. We are concerned that in the legislation there may be restrictions on land uses and activities that are not a threat to drinking water. We're concerned that the act itself does not adequately ensure consistency in the implementation and leaves too much to the regulations that will come after the legislation itself.

The government has a very strong set of pillars in the economy, the community and the environment. We've gone through the process of the growth plan; we've gone through the process of the greenbelt. In each of those pieces of legislation, there are clauses that link all of the resources of the province and balance those resources within the province. By no means are we suggesting that we should be threatening drinking water, but we do believe that Bill 43 should be dovetailed with those other pieces of legislation so we ensure that there are no undesired consequences within Bill 43 that may end up trumping what the government has already started to do with the greenbelt, the provincial policy statement and growth plans.

In effect, when we talk about consistent implementation, water belongs to all of the people of Ontario, and the province must retain ultimate responsibility for it, along with other shared resources. We're concerned that the framework of Bill 43 will end up having diverse sets of plans across the province that are inconsistent, that there will be a fragmentation of applicable rules and standards across the province. You may create an unlevel playing field for business, and you may end up inadvert-

ently sterilizing other resources that are required for close-to-market aggregate supplying.

The government has a clear intention in Bill 43 to protect drinking water. It's very important that the provincial regulations set scientifically based definitions and procedures for designation, identification and assessment. It's important that the terms that are laid out in the regulations clearly articulate what is intended by the government in this legislation. The concept of "trump card" should be there around drinking water.

Moving on to recommendations, consistent implementation: Municipalities implementing cannot be in a position where they end up placing more restrictive plans than what the government intended through this legislation.

Amend the "conflict" clause to avoid unintended consequences to land use by restricting supremacy over other interests to instances where supremacy is necessary to protect drinking water. I would emphasize "drinking water."

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The Vice-Chair: Thank you, Mr. Galloway. Now we are open for questions. Ms. Scott?

Ms. Scott: Thank you for appearing here before us today. You've highlighted a lot of good points that we're hoping some amendments will come forward on.

There is a provincial responsibility that should still be in place, and we do feel that it may compromise municipalities and create an uneven business field. With the existing legislation, can you give an example—you've got, I think you mentioned, 20-some regulations that you have to follow now, some laws that you have to follow. Do you see the Clean Water Act as impeding your business? Can you give an example of possibilities, as the Clean Water Act stands now, where you'll be at quite a disadvantage in the business-related atmosphere?

Mr. Galloway: We feel it ends, because we already have an existing piece of legislation with permits to take water, COAs governed under the ARA and the Planning Act—all of these effectively deal with drinking water, and they effectively deal with watershed protection and also ground and surface water. So we feel that adding further legislation to these existing bodies of legislation is not required in the aggregate industry. We feel we're a very low risk to drinking water.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming and making a presentation today. In the last few years, have you seen a tightening of regulation and legislation around aggregates, or a loosening?

Mr. Galloway: I can say that there has been a tightening of regulation and there has been a tightening of the scrutiny around our aggregate operations. There has been increased inspection by all ministries, whether that be natural resources, environment, labour. Frankly, we welcome it. It's important that we operate properly and we operate within our existing permits. We're very proud of our environmental record, very proud of our rehabilitation record. I believe, as a company, we're seen as a strong leader within the industry.

The Vice-Chair: Mr. Wilkinson?

Mr. John Wilkinson (Perth-Middlesex): Thank you, Bill, for coming today. We appreciate the fact that you've been working with the ministry, and your association, in helping us get to the Clean Water Act. I would agree with you that there are some shining examples in the industry of environmental stewardship that we can all be proud of. We appreciate the fact that you're here.

I guess the issue that we're dealing with is, in regard to consistency, it would be easier for the industry if there was one set of rules right across the province. There would be a level playing field, and you'd know exactly where you stand. Of course, as the minister was saying this morning, the approach that we've taken is local. I know that it causes some challenge and some concern, but don't you feel that the minister, because the minister has the power to approve the terms of reference and all of those types of things, would have the powers to ensure their consistency? And if you don't, specifically what amendment would you like to see to make sure that that issue of consistency that you're concerned about is addressed in the bill?

Mr. Galloway: We believe that the minister and the province should maintain control to ensure there is consistency. In the bill itself and then the regulations, what we would ask for is that local involvement has to take place; cross-watershed has to be in place. We have no quarrel about that; we have no quarrel about protecting drinking water. The important thing is that we end up with policies that are consistent, but we shouldn't be putting municipalities or conservation authorities in a position where they happen to be more restrictive. If there are issues that are local due to science, by all means let's address those, but if they're just out of pure policy, then we would have a problem with that. I don't believe we want people making decisions locally, interrupting what the province's intent is for the legislation on the basis of policy. It has to be science-based.

The Vice-Chair: Thank you, Mr. Galloway.

ONTARIO MEDICAL ASSOCIATION

The Vice-Chair: Now we're going to move to the Ontario Medical Association. I think you know what the procedure is. You have 10 minutes to speak and five minutes for questions. You can start any time.

Dr. Ted Boadway: Mr. Chairman and members of the committee, thank you very much for providing the Ontario Medical Association with the opportunity to present to you on this source water protection legislation. I am Dr. Ted Boadway and with me is Mr. John Wellner. We're both with the OMA.

Six years ago, the tragedy in Walkerton resulted in a process leading us all here today. There have been many stages to this process, and this is the last of the four building blocks of legislation required to complete the structure which will remedy the insufficient and unsafe water situation Ontario discovered it was in. We were all vulnerable, but the residents of Walkerton paid the price with their health and with death.

The need to protect the source of drinking water has been recognized for millennia as a key to the welfare and success of communities. By the time the Romans displayed their prowess at water source protection and transport, the importance had been known and various measures practised for over 1,000 years. History shows us that much of this knowledge was lost during the Dark Ages of Europe, with incalculable cost in human suffering over centuries. Indeed, it wasn't until the 16th century when the city of Lichfield became the first in England to provide clean, safe water to every citizen. They did so by paying attention to source protection and safe transport, just as the Romans had. So we come forward to today, and Ontario is catching up.

The OMA has been pleased to be part of this process of repair and renewal. The Walkerton crisis appeared during the annual meeting of our association in London, Ontario. A unanimous decision was made by this profession at that meeting to spare no effort in doing our part to help to respond to this challenge. We did what we could to support the doctors in that area but, quite frankly, they bore an enormous burden and we were able to help them only modestly. The profession remembers their effort.

The establishment of the commission was the single most important step carrying us into the future. It was a wise act on the part of government. The commissioner's hearings and scientific review showed that Ontario's system of water protection was in disarray and that in some cases appropriate protections had never been in place. At the conclusion of his work, the commissioner made public reports which took a holistic view of our water supply. His extensive list of recommendations for remedy were not merely useful; they were brilliant. We have all followed that brilliance in the subsequent years.

We presented to the commission on several occasions and met extensively with the commissioner's various teams. We were part of a variety of scientific panels and made a series of recommendations, all of which were adopted and then adapted in ways appropriate to the circumstances. We have been part of the consultation process, where appropriate, of the various pieces of legislation coming out of the commission.

We believe that government, both under the previous leadership and under the present leadership, has done a good job of responding to the commission's recommendations. In the case of this source water legislation, the process has been necessarily long and exhaustive. Dr. Albert Schumacher, an OMA president who went on to become a Canadian Medical Association president, served on the committee considering this topic with the previous government. When he moved to the federal scene, Mr. Wellner and I served during the extensive consultation process in this government. This consultation has taken many years, and all parties with an interest in this matter have been at the table. There has been extensive opportunity for input, and, even more encouragingly, that input has been carefully reviewed and used whenever possible.

The Minoans, the Romans and the English all cared about their water sources because of the effect they had on the health of their populations. People can drink water contaminated with any one of a host of germs. As we all know, these can be catastrophic for the human organism, as in Walkerton. These germs can cause the entire inside of your bowels to slough off, leaving a massive, weeping, bleeding surface. The toxins can cause your kidneys to fail. Sometimes your blood turns to sludge. Sometimes, as physicians, we are able to effectively combat these injuries with medical therapy, but sometimes the illness is overwhelming and either kills the patient or leaves them permanently damaged for life. These are just some of the mechanisms by which germs can damage and kill us. So this legislation may be about the environment and may have something to say about farming or mining or other human activities but, as physicians, this important water-source protection legislation is about health.

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The ancients knew that to get safe water you started at the source, but in Ontario we became overconfident in our ability to treat water just before use. We can do things to treat water they could not do but, to be prudent, we should benefit from their wisdom and add our own. In other health care settings, every step of testing and treatment has protective mechanisms built in which are deliberately designed to overlap each other. Redundancy is central to the medical notion of safety, and so we support this legislation, which takes us right back to the beginning of the water stream and introduces protective mechanisms.

Some things which are toxic, once they get into the water, can be removed by subsequent processes. But if that process fails, without redundancy, the population becomes vulnerable. Going back to the source and protecting the water from ever having become contaminated in the first instance is the only way to be able to say to the people of Ontario, "Your health is protected."

We are interested in legislation that will work to protect the health of the people of Ontario. Our review of this legislation shows us that there are two areas wherein the processes of safety can and, we believe, most certainly will fail unless they are corrected through amendment.

In section 37, we see that the process of correction requires that two ministries of the government act together in order to protect health. This is a recipe for inaction. No one is in charge and no one is accountable. Furthermore, this is asking two entirely different ministries to act jointly and with alacrity in order to protect health. This is a recipe for stasis and resultant disaster. We recommend that section 37 be amended such that the Ministry of the Environment is made responsible for taking the corrective action after consultation with the Ministry of Municipal Affairs and Housing.

Further, in section 48 the timelines we see are a plan for illness rather than a plan for health. This section applies where there is "activity which is a significant drinking water threat." With such a significant threat to the health of hundreds and perhaps thousands of people,

this section requires that no matter how dire the risk, the permit official must wait at least 120 days before protective action can be ordered in the face of recalcitrance. We are unaware of other remedies for this delay in the act, and this is unacceptable. I must tell you that we were concerned about this. This is a well-crafted act, and we were surprised to see this in here. We sought reassurance that in fact our interpretation was incorrect but were unable to get such reassurance. We still stand to be corrected, but if our interpretation is correct here, this needs repair. We therefore recommend that section 48 be amended such that, after failure to comply with an order and with a continuing imminent threat to health, the inspector may act immediately.

So, Mr. Chairman and members of the committee, let me assure you that the Ontario Medical Association supports this legislation. Everyone has had years to be recognized in the process. There has been extensive consultation and innumerable opportunities to be heard, and, as we indicated earlier, there has been action upon these suggestions. This legislation is encompassing of the subject. It is thorough and fails in only a few areas to be sufficient to protect the health of the citizens, and it can be easily repaired. It gets to the source, and the doctors of Ontario support it. Thank you for providing this opportunity to be heard.

The Vice-Chair: Thank you, Dr. Boadway. Now we'll start with a question from Mr. Tabuns.

Mr. Tabuns: Dr. Boadway, good to see you. Thank you for coming in, Mr. Wellner. Do you have any other amendments that are of concern to you, or are these the two key amendments? Are there any subsidiary or smaller amendments that you believe would enhance this act?

Dr. Boadway: These are the two we have focused upon. We think these are significant. We do not have smaller amendments that we're prepared to put forward at this moment. We wanted to focus on two important ones because we're afraid that if we don't, they will get lost. That's our experience, by the way.

Mr. Tabuns: I understand that.

Section 48: Have you had discussions with the ministry about this amendment to date, and how have they responded?

Dr. Boadway: We actually have not had discussions. We sent our inquiries in by message and never received any responses. In the face of waiting two weeks for these responses, we felt there wasn't a response, so we just went ahead.

The Vice-Chair: The parliamentary assistant to the minister.

Mr. Wilkinson: Thank you so much to the OMA for coming in and working with us on this. One observation: If you review section 80 of the bill, which deals with imminent threats, employees or agents of a source protection authority or a municipality must immediately notify the ministry if they become aware of a discharge that will result in an imminent drinking water hazard. They must also notify the ministry if the raw water of a

drinking water system exceeds standards that are prescribed in regulation. So we do have in place a protocol that deals with the ministry being notified. People have a legal requirement to notify the minister, and of course the minister has all of the powers, in my opinion, to take immediate action. Unless I'm wrong, section 80, if you look at that, will address your concern. We'd be more than happy if you could make sure that you advise me, after reviewing section 80, if you still have that concern about section 48.

Are you of the opinion that in the local planning process it's important that our local district medical officer of health be represented on that source water planning committee?

Dr. Boadway: First of all, we're aware of section 80. As we looked at the two streams of process, we thought they actually didn't link very well. If you don't have the two streams of process linked and you don't have protection built into this process, then this one might not in fact kick in and give you the protection you need.

Mr. Wilkinson: You'll get that redundancy. It's there, but it's redundant.

Dr. Boadway: As I said, we're prepared to be corrected on that, but that's how we saw it.

Mr. Wilkinson: And in regard to the local district officer of health?

Mr. John Wellner: Mr. Wilkinson, if I may—

The Vice-Chair: I'm sorry, the time is up for Mr. Wilkinson. My apologies.

Ms. Scott.

Ms. Scott: Thank you very much for appearing here today. I'll let you answer Mr. Wilkinson's question.

The Vice-Chair: Can you state your name, sir?

Mr. Wellner: It's John Wellner. I'm director of health policy at the Ontario Medical Association.

Just very quickly—thank you; I appreciate that—we are very interested in medical officers of health, and they themselves are interested in participating. Obviously, there are some watershed boundaries that overlap and include many local health units, and some local health units that include many watersheds. So there are some issues that still have to be addressed, but in general, yes, and I think you'll hear from the Association of Local Public Health Agencies this afternoon.

Ms. Scott: Quickly, I'll just ask you: Are you concerned that the provincial government is abdicating its responsibilities, asking too much of municipalities to implement the source water protection? You brought up Walkerton—and that's a real community—and what happened there. Do you think Bill 43 is actually able to be implemented by the municipalities without sufficient funding?

Dr. Boadway: That is well beyond my level of competence and I wouldn't try to answer it. I'm sorry.

The Vice-Chair: Thank you, Doctor.

SIERRA LEGAL DEFENCE FUND

The Vice-Chair: Now we move on to the Sierra Legal Defence Fund.

You may start any time you want. You have 10 minutes, and then five minutes for questions.

Dr. Anastasia Lintner: Good morning, everyone. Sierra Legal appreciates the opportunity to make oral submissions to this committee this morning on Bill 43. I have prepared a statement. I won't follow it exactly so that you don't get too bored following along. My name is Dr. Anastasia Lintner. I'm staff lawyer and economist for Sierra Legal's Toronto office, and I'm also an adjunct professor in the economics department at the university of Guelph.

Sierra Legal is Canada's largest non-profit environmental organization. We're Canada's independent legal champions for a healthy environment. Among Sierra Legal's goals is the preservation and restoration of water quality, quantity and riparian protection to a level that ensures healthy ecosystems. We have been very engaged in the whole process that has resulted from the Walkerton tragedy and have always made submissions, from the point of the inquiry right through to the more recent draft legislation and the proposed legislation and regulations, to ensure that this goal is met. It's with a great deal of involvement and background in the source protection issue that I'm making these submissions today.

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Before I get into the meat of the presentation, I just want to note that it may be that there hasn't been enough time scheduled for the public hearings on this matter. There were a great deal of requests to appear that had to be turned away, and the public hearings themselves are not going to locations in central and northern Ontario. As Justice O'Connor has stressed that these recommendations for source protection should apply everywhere throughout the province, we believe there should have been greater coverage in terms of the locations for public hearings.

Sierra Legal endorses the government's efforts to fulfill all of Justice O'Connor's recommendations resulting from the Walkerton inquiry. We believe that the proposed Clean Water Act, Bill 43, is essential to the long-term health of our communities and the environment. Introducing Bill 43 is a big step forward toward water protection in Ontario, and we strongly recommend that Bill 43 be as effective as possible.

As it is currently drafted, Bill 43 meets many of the recommendations of Justice O'Connor and many of the recommendations of a coalition of citizen and non-government groups that put forward a statement of expectations in 2004. However, there can be further enhancements to the bill. We recommend that Bill 43 be strengthened to fulfill what I call Sierra Legal's four Ps: priority, precaution, prevention and parity.

Priority should be given to protecting water resources in Ontario. As Justice O'Connor emphasized in part 2 of his Walkerton inquiry report, this protection is the first, and for some communities will be the only, barrier protecting and providing safe drinking water to residents. However, human health is not and should not be the only priority. While Justice O'Connor in his recommendations

was bound by the terms of the Walkerton inquiry, this is not so for you. The Clean Water Act should hold ecosystem health as a priority as well.

Sierra Legal is pleased to see that when it comes to the potential for conflict between different decisions being made locally and different pieces of legislation and regulations that may apply, there is an ability to ensure that water protection is the priority. This priority in Bill 43 should not be weakened. As a signal of priority, Sierra Legal believes that what needs to come along with this package is sustainable funding. There are many recommendations for initiatives that could be used to ensure this funding, and they should be pursued. At the same time, the province must ensure that water remains a public or common resource. Responsibility and accountability for water source protection should not be privatized.

Our second P is the precautionary principle. The minister mentioned in her statement this morning that precaution is the whole intent of the legislation. If that's the case, then this should be made absolutely clear within the legislation. In part 2 of the Walkerton inquiry report, Justice O'Connor states: "When the potential consequences of the hazard in question are large, the precautionary principle has a role to play in practical risk management and should be an integral part of decisions affecting the safety of drinking water."

If that is the case, then there should be a specific definition and specific reference to the precautionary principle in order to ensure that it's clearly and consistently applied and is the purpose of the legislation. There are two recommendations that are detailed in the handout I gave you that deal with that issue.

The third P, prevention: Preventing water resources from becoming contaminated in the first place is the cornerstone to the Clean Water Act. On one hand, raw water that is not contaminated when it enters the drinking water treatment and distribution system, or for that matter private wells, will be cheaper and easier to clean. What we should have learned from Walkerton and other tragedies such as North Battleford and Kashechewan is that it is less costly to prevent our water resources from becoming contaminated than to deal with the consequences. On the other hand, water that is not contaminated when it enters or is returned to natural water courses will ensure healthy ecosystems. Again, the cost of preventing water contamination is less than dealing with the consequences of the ecological degradation that result.

Sierra Legal advocates prevention, in that water is a common resource, and as with other common resources, there should be a balancing of responsibility that goes along with the right to use a resource. The oft-employed phrase, "Take only photos, leave only footprints," when talking about a common resource such as a provincial park, requires that the resource be left as the visitor found it. This is a hallmark of the principle of intergenerational equity. The Clean Water Act should ensure that prevention and intergenerational equity are addressed by en-

suring that all potential sources of contamination, such as human or animal waste, industrial pollution and urban runoff, do not reach the water system, but also that contamination is not encouraged by over-depletion of the water resources.

I'll just finally state that our fourth principle, parity, is very, very important. It leads to the idea that there isn't going to be adequate universal application of this act as it now stands throughout the province.

The Vice-Chair: Thank you, Doctor. The parliamentary assistant?

Mr. Wilkinson: Dr. Lintner, thank you so much for coming. We do want to commend the Sierra Legal Defence Fund. You're absolutely right: You have been involved since the tragedy in Walkerton, and your group has made significant contributions as all of our legislation from the previous government and our own government has evolved.

I was wondering if you could just help us out, since we're at the beginning of this process, and, given your credentials, if you could just give us a quick brief on riparian rights. That is something for us as legislators that I think we're going to hear, because we'll always hear about the conflict between the shared common aquifer and property rights.

Dr. Lintner: The idea of riparian rights is exactly the kind of principle that I was stating about balancing the responsibility with the rights. With a riparian right, an individual who has water flowing over or adjacent to their property would be able to make use of that water so long as it is returned without substantial alteration in the quality or the quantity. With that principle involved, I submit that that is the kind of treatment we want for all the water resources throughout Ontario, without requiring that it be a private right. To the extent that the government is interfering with private rights, you should keep in mind that individuals have a responsibility to ensure that the quality and quantity aren't altered in the first place.

The Vice-Chair: Thank you, Mr. Wilkinson. Ms. Scott.

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Ms. Scott: Thank you very much for appearing before us here today. I agree that there certainly is not enough time for public hearings, especially in the southwestern and northern parts of Ontario.

You mentioned that the Clean Water Act needs proper funding. Who do you think should pay the implementation costs associated with the Clean Water Act?

Dr. Lintner: The implementation should be funded through the province, and I believe that the way it can be funded would make use of a number of potential sources of that funding. So while the province ultimately would be responsible, it may be that some of the raising of funds would be through ensuring that there are some charges at the municipal level, but also ensuring that the province would charge for permits to take water, and so on.

Mr. Tabuns: Thanks for your presentation today. You make a number of recommendations here, some of which

have proposed legislative wording and some of which don't. Can you provide us with legislative wording for all the amendments that you've brought forward?

Dr. Lintner: I can do that.

Mr. Tabuns: Great. Thank you.

The Vice-Chair: Thank you, Dr. Lintner, for your presentation.

SIERRA CLUB OF CANADA, ONTARIO CHAPTER

The Vice-Chair: Now we have the Sierra Club of Canada, Ontario chapter. If you know the procedure, you have 10 minutes to speak and five minutes for questions. I wonder if you could state your name. You can start any time you want, sir.

Dr. Lino Grima: My name is Lino Grima, and I'm an academic with four decades of experience in the water management field at the University of Toronto. I appreciate this opportunity to comment on the Clean Water Act, which is a crucial step for the long-term protection of healthy communities and freshwater ecosystems.

The Ontario government is to be highly commended for this and other legislative initiatives flowing from the recommendations of Mr. Justice O'Connor. I've handed in a longer written version of this presentation and I shall limit this oral version to some highlights and our 12 recommendations.

I make this presentation on behalf of the Sierra Club of Canada and its Ontario chapter. The Sierra Club of Canada has about 10,000 members, supporters and youth members, with five chapters across Canada. The other authors of this presentation are also deeply committed to water advocacy and, among other responsibilities, serve on the Ontario advisory committee on the implementation of the Great Lakes annex.

The Sierra Club of Canada wishes to associate itself with the many excellent specific recommendations to improve this legislation, communicated to you by the group of environmental and community organizations led by CELA and Environmental Defence, with generous support from the Gordon foundation.

The Sierra Club of Canada strongly supports this bill and seeks its early implementation: the sooner, the better. Five years sounds like a long time, but the sooner it's implemented, the better.

While the act is an excellent start, some changes are needed to make this act more effective in protecting the health of the citizens of Ontario.

Our first set of recommendations refers to water conservation. While the main thrust of the Clean Water Act is protection of water quality at source, it is clear that the protection of water quantity is equally fundamental to the purposes of this act. Groundwater aquifers are often the source of community water supply. One of the major threats to water quality and the replenishment of groundwater aquifers is the spread of impervious services in recharge areas. Therefore, our first recommendation is

to set clear guidelines to limit the spread of impervious services in recharge areas.

Our second recommendation is that Bill 43 be amended to include a requirement that source protection plants within all Ontario watersheds be mandated to develop best practices in water conservation. In particular, assessments in water budgets required by this act in section 13 should identify effective water conservation policies for the watershed. It is at this point that key assumptions would be made about demands for water by residential, municipal and industrial users. The assessment report should include a water conservation plan aimed at reducing overuse and thereby avoiding potential water shortages.

The Sierra Club's third recommendation is that the full cost of community water supply includes the administrative and infrastructure costs of source protection and that municipalities, especially small ones, have access to new and additional sources of revenue to meet the significant additional responsibilities of this act.

Our next set of recommendations refers to the use of risk assessment. At section 48 of the proposed act, the response to a potential threat to drinking water may include the preparation of a risk management plan. The risk assessment and management plan would be prepared in accordance with regulations and rules. We request further opportunity to comment on regulations when they are drafted.

However, having worked with the risk management framework on a wide range of issues, the Sierra Club of Canada's fifth recommendation is that source protection plans reflect a worst-case scenario hazard assessment rather than conventional risk assessment.

In our next recommendation, the Sierra Club strongly recommends that the precautionary principle be included in the purposes of this act, and furthermore, that the precautionary principle be the main guideline in the development of the source protection plans.

Our next set of recommendations is about the need to integrate relevant aspects of Great Lakes protection in this bill. To some extent, sections 74 and 76 in part V of this bill address our concern, but not entirely. Our seventh recommendation is that the source of water for the very large majority of Ontarians should be an integral and equal part of this act and that the provisions in sections 74 and 76 should be mandatory rather than permissive.

Our next recommendation is that Ontario take this excellent opportunity to integrate into this bill reference to the remedial action plans required by the Great Lakes Water Quality Agreement. Similarly, we strongly urge that there be a connection between Bill 43 and the provisions to implement the annex agreement which was signed last December, and especially its provisions on conservation, limits on consumptive use, return flow and diversions out of the basin.

We next turn to the role of citizen participation. The success of Bill 43 will be judged in its implementation, which will, no doubt, require public support, particularly

at budget time. Therefore, meaningful citizen participation is to be supported. It is not a tap that can be turned on at will. Public support needs to be encouraged and nurtured in good times if it is to be available in the lean times.

We strongly recommend that residents have more than token representation on the source protection committee and that residents be selected through an open election or transparent appointment process. In addition, we strongly urge that the representation of public health departments on the source protection committees be mandatory.

The Sierra Club of Canada strongly recommends that the process of the source protection plan in all its stages be transparent and particularly that all draft terms of reference and assessment reports be open to public comment prior to approval. We also strongly recommend that a provision for regular, periodic review of the source protection plans be made mandatory in this bill.

We appreciate very much the opportunity to comment on the Clean Water Act. I thank you, Mr. Chairman.

The Vice-Chair: Thank you, Mr. Grima. Ms. Scott?

Ms. Scott: Thank you very much for appearing here before us today and for your recommendations, which we look forward to taking further. Do you feel the impact on rural Ontario, how this is going to be? It's really downloading the responsibility, the implementation costs onto the municipalities. How do you feel about the Clean Water Act right now? Who do you think should be paying for the costs?

Dr. Grima: I'm sure this is a very political process, and no doubt there will be new responsibilities given to municipalities under this act, and I think some financial arrangements should be made in order to make this possible. I'm not sure how this would be done, but—

Ms. Scott: But you think the province should still have a responsibility in the costs associated with implementing the Clean Water Act?

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Dr. Grima: I think the province has the final responsibility for protecting the health and the environmental quality of source water in Ontario.

Ms. Scott: Okay.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Professor Grima, thank you for coming today. Good to see you. One of the things that you speak about in your package here is taking an approach to source protection plans that reflect worst-case hazard assessment rather than conventional risk assessment. Can you tell us how sharp the difference is between those two?

Dr. Grima: Yes. The difference is related to the precautionary principle: that when we're dealing with something as important as health and safety and maybe the difference between life and death, we should err on the side of caution. In hazard assessment—and I hope you guys don't tell this to my dean, because I happen to teach in this area—I think we should be very cautious and take a worst-case scenario rather than try to balance all the bits and pieces in our lives, which is what risk assessment does.

I'm not suggesting that we should avoid all risk. We take risks all the time. I've taken a risk this morning coming here. I'm taking lots of risks talking to you guys.

So that's the difference. The difference is realizing that this is a critical issue. We have some unfortunate experience in this respect. I've travelled in many places, and the big difference between so-called Third World countries and our countries is that you can drink tap water with confidence. That's my personal definition of the difference.

The Vice-Chair: Ms. Wynne.

Ms. Wynne: Thank you very much for being here, Professor. You've raised the issue of the Great Lakes, and I understand that 70% of Ontarians drink water that comes from the Great Lakes. You've suggested that the measures should be mandatory. There are sections in the bill where we refer to and we require consideration of agreements, and that is in the legislation. But given that these are international waterways, we have some limitations on what we can require and what we can make mandatory and our ability to effect changes on a whole-lake basis. So can you comment from your perspective on how you think the federal government could help in protecting the Great Lakes, what they should be doing?

Dr. Grima: In the larger brief that I handed in, I refer to two processes, toward international and interprovincial-interstate processes. I think these present a good opportunity to refer in Bill 43 to these two other processes. One process is the Great Lakes Water Quality Agreement, which dates back to 1972. In 1987 it was revised to include a protocol about the areas of concern. It seems to me that the remedial action plans, on which I have worked since 1987 too, give us a good opportunity to look at the protection of water sources on a larger scale than just one watershed. For example, Toronto gets its water from four different plants over a spread of 30 kilometres, and the shoreline can be polluted by storm water—

Ms. Wynne: But does the federal government have a role in making that happen?

Dr. Grima: I think the Ontario government and the federal government already have an agreement on the Great Lakes, and I think there should be a reference to that. It's just making use of what the federal government is already doing.

The Vice-Chair: Thank you, Dr. Grima.

ONTARIO WATER WORKS ASSOCIATION ONTARIO MUNICIPAL WATER ASSOCIATION

The Vice-Chair: I'm now going to move on to new presentations, by the Ontario Water Works Association and the Ontario Municipal Water Association.

You know the procedure: 10 minutes for your presentation and five minutes for questions. You can start any time you're ready.

Mr. Rod Holme: Thanks very much. My name is Rod Holme. I chair a joint committee on water legislation for

our two associations. With me are Rob Walton, chair of the Ontario Municipal Water Association; Wayne Stiver, president of the Ontario Water Works Association; and Joe Castrilli, who is counsel to both associations. Our associations are appearing before you jointly in overall support of Bill 43, the Clean Water Act.

Our associations are representative of the full range of professionals involved in the provision of drinking water in this province. OMWA was founded in 1967 and represents over 170 water authorities supplying drinking water to over seven million residents of Ontario. The organization's historic focus has been on legislative, regulatory and policy matters, in conjunction with the delivery of safe drinking water in the province. OWWA is a non-profit scientific and educational association made up of over 1,700 members that includes individuals, businesses, consulting firms and municipal water providers.

Our associations were jointly parties to part 2 of the Walkerton inquiry. Since the end of the inquiry, OMWA and OWWA have participated in and prepared extensive submissions on the post-Walkerton legislative activities of the government surrounding safe drinking water. The recommendations of the Walkerton inquiry recognized source water protection as an essential element in a multi-barrier approach, which both our associations have long supported as integral to protection of drinking water and public health.

Our associations agree with the purpose of Bill 43 and support all of the measures in the bill as integral to meeting the bill's purpose. We have studied the bill very closely and we do wish to offer constructive suggestions for its improvement. Both organizations urge the standing committee to examine our four overarching themes and six recommendations that both organizations believe the standing committee should have regard to in consideration of Bill 43.

Mr. Rob Walton: I'll speak to the first two of our recommendations, the first being making municipalities true partners in the process of source water protection. Municipalities believe that they are being given considerable responsibility without corresponding authority under Bill 43. Only municipalities in watersheds where there's no conservation authority—mostly in northern Ontario—may be given authority commensurate with expected responsibilities under Bill 43. In particular, section 23 of the bill authorizes the minister to enter into agreements with such municipalities to prepare source protection plans for a source protection area. This type of authority is not available under the bill to municipalities in southern Ontario, where most of the conservation areas are located. OMWA and OWWA recommend that the application of section 23 be expanded to the whole province, not just to those parts of the province where there currently is no conservation authority.

The next one of our recommendations for change is to create an appropriate financial engine to ensure that source water protection occurs. There is municipal concern about the costs associated with implementing

source protection measures. Much depends on the nature and extent of the proposed municipal authority under section 47 of the bill to impose fees with respect to regulation of drinking water threats and what the province proposes under the Sustainable Water and Sewage Systems Act. First, there are potential constraints under sections 9 and 10 of SWSSA—which is the acronym for that act—on the level of fees that municipalities may charge with respect to source protection. Secondly, the generality of the language used in section 47 makes it somewhat unclear as to the activities with respect to which municipalities may impose fees, particularly if there are activities already regulated by the province.

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Finally, section 47 does not address the situation of municipal costs in relation to measures to clean up or otherwise control orphaned or abandoned sites, and by definition will not have anyone upon whom the municipalities will be able to impose these costs for source protection. We recommend that Bill 43 and/or SWSSA regulations must address which source protection costs should be linked to drinking water supplies—and conversely which should not—and where revenue should come from to support the necessary programs, including those in relation to orphaned and abandoned sites.

A further component of the cost issue relates to the need for the agricultural community to adopt certain measures in order to achieve certain source protection objectives. OMWA and OWWA agree with the rural and agricultural community that Walkerton inquiry recommendation 16, which states that the province should establish a system of cost-share incentives for water protection projects on farms, is not reflected in Bill 43. We recommend that this be included.

Mr. Holme: Wayne Stiver will now speak.

Mr. Wayne Stiver: Thank you. We are concerned about existing activities that could pose drinking water threats if section 49 in Bill 43 does not apply to them. As the standing committee is aware, section 49 cannot prohibit drinking water threats identified in the source protection plan if the threat existed before the coming into force of the plan. We recommend that section 50 be amended to require any activity listed by regulation, identified in an assessment report, located in surface water intake and wellhead protection areas, pursuant to section 49—because it is an existing activity that cannot be prohibited under section 49—be listed, regulated and, if necessary, prohibited pursuant to section 50.

We also are concerned that more provincial laws should be listed in section 96(2) as being trumped by Bill 43 in the event of conflicts that currently are identified in that section. It is apparent that in the event of a conflict, the provision of Bill 43 only prevails over instruments issued under the Nutrient Management Act, 2002, and not over instruments under other provincial laws. Accordingly, we recommend that Bill 43 be amended to allow it and source protection plans issued thereunder to prevail over instruments issued under other provincial acts or regulations.

The last point we want to make applies to the right measures for protecting source water. OMWA and OWWA are further concerned that Bill 43 contemplates establishment of raw water standards by regulation. Neither organization supports the establishment of raw water standards because they are not consistent with the multi-barrier approach. Source water protection is one of the multi-barriers necessary for the protection of safe drinking water. However, source water protection is not intended to replace the other barriers, such as water treatment. If raw water standards were established, their existence might compromise the multi-barrier approach by leaving the impression that the other barriers, such as treatment, are not required.

Existing MOE guidelines and programs point to an approach that is superior to establishing raw water standards. A comparable approach in the United States supports the multi-barrier approach because it requires treatment methods appropriate to the particular raw water quality in question after characterization of the water supply and the monitoring of trends have occurred. We therefore recommend that references to raw water standards be removed from Bill 43.

In conclusion, Bill 43 adds to the foundation of a sound regime of drinking water protection in Ontario and we, both groups, strongly support it. Adoption of the amendments proposed by the OMWA/OWWA for Bill 43 would further advance the goal of delivering safe drinking water to the Ontario public.

At this time, we will be pleased to answer any questions from the members of the standing committee.

The Vice-Chair: Thank you both, Ontario Water Works Association and Ontario Municipal Water Association. Now we open the floor for questions. Mr. Tabuns.

Mr. Tabuns: Yes. Can you tell us what you think the implications would be for this act if your recommendations aren't adopted?

Mr. Stiver: Well, a lot of the recommendations are for clarification, so it's hard to say what will happen. But as far as the funding and the standards and what have you, we just think it strengthens the act. What would happen if they weren't implemented? I think we would have a weaker piece of legislation.

Mr. Tabuns: The cost of regulation monitoring, enforcement: Do you have a sense of what it would cost to actually implement these measures in your municipalities, in municipalities in this province?

Mr. Walton: I can probably speak to that because I am from Oxford and we were mentioned in the minister's speech. I think the costs for what we've done in Oxford are properly put out by the government, but what aren't in there are the things we talk about today, things like the orphan sites and those other measures. We don't have a good handle on what they're going to cost and we think it should be more of a provincial responsibility as to how we get at these sorts of measures and other sources of revenue that can be brought into this so that the taxpayer or water ratepayer isn't the only one paying for the whole cost.

Mr. Tabuns: Do you deal with the orphan sites now?

The Vice-Chair: Thank you, Mr. Tabuns. Parliamentary assistant?

Mr. Wilkinson: Just on the question of section 96, you've raised the concern that somehow section 96 doesn't have primacy over all other acts. My reading of it states that there is primacy. Though nutrient management is covered specifically under subsection (2), it doesn't preclude the fact that Bill 43 has supremacy. I'd be interested in your opinion on that.

The Vice-Chair: Can you state your name, sir?

Mr. Joseph Castrilli: Yes. My name is Joe Castrilli and I'm counsel to both organizations. It's very clear from a reading of subsection 96(2) that the only thing it applies to are instruments issued pursuant to the Nutrient Management Act, and that's where Bill 43 may trump an instrument. However, if an instrument—and what I mean by an instrument is a licence, permit or certificate of approval—is issued under any statute in provincial law other than the Nutrient Management Act, Bill 43 does not trump the instrument. It's very clear to see that when you compare subsection 96(2) with subsection 96(1).

Mr. Wilkinson: But in 96(1), if another instrument actually does a better job at protecting drinking water, the provisions that provide the greatest protection to the quality and quantity of water prevail. Why would we not assume that that would be the best thing for the public?

Mr. Castrilli: Subsection 96(1) only applies to other acts and other regulations; it does not apply to other instruments. Subsection 96(2) applies to other acts, other regulations and other instruments but only in relation to the Nutrient Management Act.

Mr. Wilkinson: We'll need clarification on that. Okay. Thanks.

The Vice-Chair: Ms. Scott?

Ms. Scott: Do you agree that the bill, as it's written, is going to have a very negative impact on rural Ontario?

Mr. Walton: I guess it's me who is going to answer that. I'm from rural Ontario, Oxford county. I don't think so. In Oxford county we've worked hard to make sure—and we're all on groundwater too—that our farming community can coexist with our municipal water supplies. We've been working on this for 10 years. What has to happen here is that we have a partnership that works forward on this together to make sure that implementation doesn't impact on farmers such that they can't do their business as well or it doesn't give municipalities the power to do the source water protection as well. So I think there are ways, and we've tried to find those in Oxford.

Ms. Scott: So do you think there should be provincial funding to help farmers in this situation implement some of the rules that are going to come with the Clean Water Act? I know there is expropriation without compensation in the Clean Water Act. Do you agree with that?

Mr. Walton: I'm not familiar with that section, the expropriation without compensation part of it. But I think there are a few things that have to work together here. There's the Nutrient Management Act, there's source

water protection and there's the whole provision of the Clean Water Act. It all has to work together for it to be successful. There is some tweaking of this, as we've stated, and funding from the province as a key cornerstone to this is fundamental.

The Vice-Chair: Thank you to all of you.

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ENVIRONMENTAL DEFENCE

The Vice-Chair: Now we'll move to Environmental Defence. I think they are here.

You can start whenever you are ready, and please, when you want to speak, state your name.

Dr. Rick Smith: Good morning. Thank you for the opportunity to present our views on this very important piece of legislation. My name is Rick Smith. I'm executive director of Environmental Defence. With me this morning is my colleague Heather Smith, our water project coordinator.

Before we begin, just a few words about Environmental Defence. We're a national charity dedicated to protecting the environment and human health. Our efforts to secure protection for Ontario's drinking water began in earnest with our submissions to the Walkerton inquiry. We've been actively involved in the development of the Clean Water Act since 2004, when we co-authored a statement of expectations for the act that was broadly subscribed to by citizens and environmental groups. Since then, we have maintained our efforts to help encourage and coordinate input to this act from a wide variety of organizations.

The latest product of these efforts you have in front of you, I hope. It is a joint statement released this morning, signed by 16 citizen and environmental organizations, that highlights the importance of passing this act as swiftly as possible, once a number of important changes have been made.

We believe this act to be essential for the long-term health of our communities and our environment. A province-wide law to protect our sources of drinking water was one of Justice O'Connor's key recommendations. It's now six years since the tragedy at Walkerton and, if anything, this law is long overdue.

In our presentation this morning we want to highlight four factors that we believe are critical to the success of the Clean Water Act:

(1) The province must demonstrate a clear commitment to the goals of this act in interim land use decisions.

(2) The act must serve as a launching pad to re-establish provincial leadership in Great Lakes protection.

(3) The public needs to be thoroughly engaged in the act's implementation through education and outreach, and the province must provide meaningful avenues for public involvement.

(4) There has to be long-term funding available for those entrusted with implementing the plans.

Ms. Heather Smith: I'll take over from there.

Today's land uses have a significant impact on tomorrow's drinking water supplies. There are sprawling housing developments, like the ones currently being disputed in north Leslie or the ones recently approved for construction on the Waterloo moraine. These can prevent water from recharging the aquifers that so many people depend on. There are also massive infrastructure projects like the infamous big pipe, which we heard referenced this morning, which can drain millions of litres of water every day from the aquifers that feed Toronto's major rivers. They have already resulted in the drying up of streams and some private wells in the region.

Developments like these can have long-lasting impacts on the quality and availability of our water resources. These effects are well known, as are the means of preventing them. Given the development pressures currently faced by many regions of the province, there is every reason to believe these effects will get considerably worse in the years it will take to approve the first source protection plans.

The province has a responsibility to support the goals of the Clean Water Act immediately by ensuring that its land use planning decisions prevent unnecessary irreversible impacts to the aquatic ecosystems that supply our drinking water. Not living up to this responsibility risks undermining both the act and the source protection plans by sending a clear signal about their lack of importance. Some elements of the development industry have a long history of fighting new restrictions on how and where they can build, and source protection plans will likely be no different. Taking a clear stance in support of water protection in the decisions made today will allow the province to begin defusing some of that opposition and provide source protection plans with the solid foundation they need to be effective tools for environmental protection.

One way of taking a clear stance in support of the act's goals would be to develop strict guidelines limiting the spread of impervious surfaces in key recharge areas. This would protect the aquifers that supply countless wells across the province by ensuring that sprawling development does not interfere with their replenishment. These guidelines should be published soon after the act's passage, and all new development applications should be required to demonstrate how they will meet those guidelines.

On a broader scale, the province can also build credibility and support for this act by using it as a stepping stone for renewed leadership on the Great Lakes. The lakes provide drinking water for 80% of the province's residents, and the province cannot claim to be protecting our sources of drinking water unless the needs of this vast majority are addressed. The act's current provisions for the Great Lakes are certainly welcome, but we encourage the province to go further. The act must include strong commitments to protect the Great Lakes, and the province must ensure that the goals of source protection are supported by all interjurisdictional agreements, particularly the Great Lakes Water Quality Agreement and the Annex 2001 agreements.

Dr. Smith: The next key step is to support local implementation through extensive and ongoing public education and participation. Frankly, the case for this has already been made by much of the inflammatory rhetoric about the Clean Water Act that has been circulated in recent months, some of the various apocalyptic assertions about this act that you will have seen in some newspapers and that doubtless you will hear through some of these committee hearings. These assertions are out there. Frankly, they're based less on an accurate interpretation of the act than on a politically motivated desire to tie this bill to the broader economic and social challenges faced by Ontario's rural residents, which are certainly real but on which this act will ultimately have very little impact.

A much greater problem, we think, than the fact that these erroneous assertions are being made is that some people have begun to believe them. One way to start dispelling these misgivings is to include meaningful avenues for public participation throughout the development of source protection plans. You will see some specific suggestions on how to do that in our brief today.

The last point I wanted to touch on is the fact that it's essential that there be a sustainable and reliable approach to securing funds for the implementation of source protection plans. The province is entrusting municipalities with the task of implementing the plans, and it must, therefore, be prepared to support them in these efforts. The long-term success of this act will depend on the province finding new ways to generate or reallocate revenue for its implementation. Fortunately, a range of options has already been identified. We don't need to reinvent the wheel. I would urge this committee to take a look at them.

The implementation committee for source protection identified several funding mechanisms in its report, including water-taking charges, water rates, pollution charges and a number of other things. The province has already committed to implementing water-taking charges and to reforming the framework for water rates under the Sustainable Water and Sewage Systems Act. These two initiatives are a good start, but there needs to be more in this regard.

In conclusion, by working to both create the best possible act and to lay the foundation necessary for its local implementation, the province stands to achieve meaningful, on-the-ground progress in protecting drinking water sources. If either aim is ignored, however, that protection will suffer. Six years after Walkerton, surely that is something that we can ill afford. Thank you for your attention.

The Vice-Chair: Thank you very much for your presentation. The parliamentary assistant?

Mr. Wilkinson: Just following up on the question of perhaps rhetoric being used injudiciously, I would ask research if you could provide a summary about the Expropriations Act, which is referenced in section 83, and about whether the Expropriations Act mandates expropriation without compensation. I don't think that is factually correct. I think the committee members should

ask for a summary of that so we can have that in front of us so we can deal with section 83 based on that summary.

Thank you so much for coming and specifically about your concern around the Great Lakes and how we need to integrate with both our federal and international partners. Could you just kind of flesh out your concerns about what we could do in this bill, because that's what's in front of us, to address those concerns?

Dr. Smith: We have some suggestions in the statement co-signed by 16 organizations that we've given you today. Two very quick things: The language connecting the watershed protection approach to the Great Lakes currently is somewhat permissive, and we would suggest that it be made stronger; secondly, that the act specifically mention some of the interjurisdictional agreements that Ontario is—

Mr. Wilkinson: A party to.

Dr. Smith: —a party to, or engaged with, right in the act.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today. It was brought up that there's a lot of talk in rural Ontario about the implementation of it. Do you think Bill 43 is the right approach to protecting municipal source water, especially if the municipalities and landowners—there are regulations to follow—are not given the proper tools, as in monies, really, to follow the Clean Water Act? Do you think it's actually going to be more—I think it's going to be more confrontation than co-operation, but I'd be happy to hear your views.

Dr. Smith: I don't think that this act sets up a recipe for confrontation. In fact, speaking as a non-profit organization engaged in this issue and working on a daily basis with other stakeholders engaged in this issue, what this act sets up is a rather lengthy implementation timetable—we think too lengthy—but it sets up a framework to allow various stakeholders in different watersheds to sit down around a table and to work out a game plan for that specific watershed. That seems to me to be a rather reasonable approach, one that has the potential to include the various voices that need to be there at the table. I don't see that as being threatening in any way.

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I regret the fact that some of these assertions in recent days have acquired, as I said, rather apocalyptic proportions. I would agree with you on the money side of things, and I hope we've made that rather clear in our presentation. The province needs to pony up the necessary money to make sure that this implementation happens and that those who are being asked to do the work have the resources to do the work. Again, we don't need to reinvent the wheel here. The implementation committee had a lot of great suggestions, and we think that's where the province should start.

Mr. Tabuns: Thanks for the presentation today. Can you give us a sense of the scale of expense that we're talking about from implementation and actual monitoring enforcement action, and where you see the large expenses coming from, given the earlier commentary that

Oxford county seems to be able to do this at a relatively moderate cost?

Dr. Smith: I'll take a stab at that and then pass it over to Heather.

I direct your attention to the implementation committee report. I would suggest it would be highly appropriate for this committee to take a look at the money side of the equation and provide some guidance. There's a variety of suggestions for mechanisms there. Certainly as the implementation proceeds, there will be some differences in resource requirements by watershed. Obviously, some are more stressed than others, so there would need to be a bit of an iterative approach, sort of a tiered approach to the expenditure of resources.

Ms. Smith: I think the presentation before us also highlighted a couple of issues that weren't addressed in those numbers that came out for Oxford county. Certainly some of the enforcement is going to be a big expense, like the mechanisms around the risk management plans, the joint agreements with the landowners as to what tasks they're going to take on. Those are going to absorb resources. The permit officials and the administration aspects are going to absorb quite a bit of resources.

The Vice-Chair: Thank you for your presentation.

ONTARIO MINING ASSOCIATION

The Vice-Chair: Now we move on to the Ontario Mining Association.

I wonder if you know the procedure. You have 10 minutes to speak and five minutes for questions. You can start when you're ready.

Mr. Chris Hodgson: Sure. Good morning, Mr. Chair, members of the committee. My name is Chris Hodgson, and I'm the president of the Ontario Mining Association, OMA. With me today are Jim Vincent, mine manager of the Canadian Salt Company; Rosanno Catalan, environmental scientist, fuel services division of Cameco Corporation; Liam Mooney, legal adviser for Cameco; and Adrianna Stech, the OMA environmental sustainability manager.

We very much appreciate the opportunity to appear today to address Bill 43, the Clean Water Act, which is of considerable interest to the members of the OMA and could significantly impact their activities.

The OMA was established in 1920 to represent the mining industry in the province and is one of the longest-serving trade organizations in the country. We have a long history of working in concert with government to ensure that the mining industry in the province is competitive and that Ontario is a leader in environmental protection. Our members have a vested interest in this. After all, they live with their families in the communities in which mines operate.

Needless to say, our members are supportive of the concept of source water protection and recognize that a quality water supply is essential for sustaining life, the health of Ontario citizens, and the protection of the natural environment within Ontario. However, in our

submission of February 2, 2006, to the Ministry of the Environment, we indicated that the Ontario Mining Association did not agree that the approach taken in Bill 43 was the correct approach to support these objectives.

As you must appreciate, our members are heavily regulated on water issues by not only federal and provincial laws of more general application but also regulations directed specifically at the mining industry. This legislative paradigm entails numerous detailed requirements for water use and quality that serve as a mandate for water protection at our operations.

This industry has for many years had in place regulation of water use and quality that meets or exceeds worldwide standards. Therefore, the creation of a new regulatory structure—that is, the creation of source protection committees with the power to identify members of our industry as significant drinking water threats, whatever that may come to mean—was not encouraging news.

I would ask you to put yourself in the shoes of our industry for a minute. After decades of development involving various government agencies, an efficient and impressive standard of water protection is now in place. We are now being told that this will be overlaid with a new and, as designed, overriding authority granted to members of a new committee and new designated provincial authorities. Many of these players will have no experience with our industry, no expertise in water protection issues and no appreciation of the regulatory structure already in existence. These persons are given extraordinary powers to create uncertainty and delay in our activities by identifying potential significant drinking water threats to source protection, raising issues that will doubtless take years to resolve. We are disappointed that this government does not recognize that for major industry sectors where water regulation is well developed and successful, handing over authority to those new to these issues poses an unnecessary risk and may not succeed.

I will now address three specific matters in the legislation before you. First, we continue to be concerned about the vagueness of the definition of a "significant drinking water threat," as well as the lack of timelines inherent in a process that could take years for the resolution of such a designation. Ultimately, such a threat could be found to be not significant or, even if significant, the issues could be dealt with by reduction of the risk.

While the OMA welcomes public participation under existing structures, it can be anticipated that such a designation could be used as a tool by some to oppose, delay or negotiate changes to existing or proposed mining operations. Again, I would ask you to put yourself in the shoes of our industry, as you pick up your national paper one morning and find that your company or operation has been identified as a significant drinking water threat, knowing that it is in full compliance with all federal and provincial legislation. Further complicating matters is the knowledge that the resolution of whether this designation is appropriate will take years to unfold.

You must recognize the chilling effect of the path that you are considering, particularly given that you are putting such a determination largely in the hands of non-experts.

Secondly, the OMA remains concerned about the large transfer of these environmental responsibilities to source protection committees and source protection authorities and, we now understand, creating a number of regional water risk managers and so on. We believe that an inordinate amount of responsibility is given to these entities and that there should be a scaling back on the powers given to these new entities in favour of established ministries and existing structures.

The OMA continues to ask why this new structure is necessary. The Ministry of the Environment is transferring its authority to plan and enforce source water protection to newly created bodies without the expertise or experience to manage such issues. While we recognize that the ministry retains an overview and approval responsibility for some of these activities, we are hard-pressed to see the benefit of such an approach.

Finally, the Ontario Mining Association submission, along with others, has called for a pilot study to ensure that this legislation is workable and to prove that our concerns are misplaced. We're disappointed that the indications to date are that this recommendation has not been accepted. We anticipate that the proposed structure will not be efficient and will cause the public of Ontario unnecessary concern about the protection of municipal water sources, as various committees and authorities take different approaches to these difficult issues.

Again, the OMA would like to emphasize our support for the concept of source water protection and our commitment to meeting the requirements of environmental protection. However, we believe that the concerns with the proposed bill identified in this presentation need to be addressed before this legislation is passed.

In closing, allow me to provide you with a brief overview of the value that mining brings to this province.

Province-wide, there are 43 mine sites, which produce gold, nickel, copper, salt, gypsum and a variety of other metals and industrial minerals that are valuable and essential for modern existence.

Mining contributes \$7.2 billion in added value to the Ontario economy.

Some 197,000 people are employed in the mining cluster.

The Toronto Stock Exchange is the mine-financing capital of the world, with 1,100 listed companies.

Safety performance in Ontario is among the best in any sector in the world, with lost-time injury frequency now below one per 100 workers.

The MISA sectors, metal mining and industrial minerals, are all over 99% in compliance with meeting the discharge limits set by the ministry; within that allowable discharge, our members on average run at about a quarter of the limits.

The OMA is also actively involved in environmental stewardship, including an innovative venture with the Ministry of Northern Development and Mines to fund the

rehabilitation of abandoned mine sites on crown land, for which our members hold no liability, but it's the right thing to do.

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In addition, mining makes critical contributions in areas such as skill development of human resources, the enhancement of communities, and spinoff economic activities and infrastructure support for communities. Given its value and growth potential, it is of interest to every Ontarian to keep mining in the province competitive in an uncompromising global market. In order to do that, we need to preserve our key advantage in the global market: clear and consistently applied laws and predictable costs.

Thank you very much for the opportunity to review the proposed bill and provide our comments.

The Vice-Chair: Thank you, Mr. Hodgson, for your presentation. We'll open the floor for questions. Mr. Barrett.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you for the presentation. As a committee, we're trying to determine if this bill is the best solution for some of the problems that are being defined during these hearings. In your view, do you feel this legislation, the way it's written, will adequately accomplish the stated intentions of the legislation?

Mr. Hodgson: The problem with this bill is that we don't know, because you're going to have inconsistencies across the province as different regions take different approaches. That's our concern. We recommend that if you want to take this approach, at least do a pilot study. Take one area, one region, and figure out how long it takes to bring the people up to speed with expertise and what funds are required to do a proper job to give industry that certainty of clear, consistent rules. That's been rejected, to try to do it all at once right across the whole province. But thinking about it, you could have two; you could have one run by the ministry and one run by a conservation authority. It might be the proper approach to see which one is more cost-effective and gives us clear and consistent rules.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you for your presentation today. Do you think Justice O'Connor was wrong in his approach to water protection?

Mr. Hodgson: I have no idea. I know that when we did the Oak Ridges moraine, we brought in for the first time a number of provisions to protect source water, along with making it so that you couldn't put storm water directly into the aquifer, doing an identification of the wellheads and making sure there were setbacks and protection. There are about five initiatives in that legislation.

The mining industry is what I'm speaking for right now. We're governed by not only a myriad of federal laws and provincial laws but also laws specifically in regard to regulations around water for mining. It's very complicated and precise. What we're worried about is that you'll hand this over to people who have no background in mining, this sector, and secondly no back-

ground in the expertise required to make determinations on this before they would just blanketedly say, "It could be, potentially, a threat to source water protection." All of a sudden you've got to have full disclosure in publicly traded companies, and it has a chilling effect. We'd rather see that there would be expertise that we're comfortable with at the Ministry of the Environment, where we have people who are knowledgeable and viewed as experts in the world, actually, to make those determinations.

The Vice-Chair: Mr. Wilkinson?

Mr. Wilkinson: Thank you, Chris, and to the OMA, for coming in today. You have a unique insight into this, given your experience in this place. On behalf of the minister, I do want to thank the OMA for participating. I know that you sat on both the 2003 advisory committee and the 2004 implementation committee in regard to source protection on a watershed basis, and we appreciate that. We're glad that we're consulting with you and listening to your concerns.

This was raised previously by Dufferin Aggregates, the question of provincial standards: one-size-fits-all versus watershed-based. This bill definitely goes to watershed-based planning as being the appropriate method. Then you raised the questions of consistency and whether or not there's an overlap.

I do want you to know that in regard to your question of your being in compliance with everything, the province and federal, and then this comes along and throws that out, it is the government's intention that a risk-management plan, or if necessary an order, could only be used where there is no existing site-specific provincial approval to manage an activity that poses a significant risk to the drinking water source. Obviously the employees of the mine who drink the water nearby are not going to want a significant threat to their municipal source. Also, it's the government's intention to ensure that a risk-management plan is only imposed on a person responsible for an activity that poses a significant risk as a last resort.

So if we could provide greater clarity on that, would that help assuage some of your concerns?

Mr. Hodgson: Definitely. That's our whole concern, the uncertainty of it. We agree with the watershed approach. We just want to make sure that the people in there are up to speed in the expertise required to make those determinations.

Mr. Wilkinson: Particularly in your industry, as opposed knowing that everything is right scientifically on the watershed, but also how your industry fits into that.

Mr. Hodgson: Exactly.

The Vice-Chair: Thank you, Mr. Hodgson, for your presentation, and thank you to all of you. The time is over.

REGIONAL MUNICIPALITY OF WATERLOO

The Vice-Chair: Now we're going to go to the regional municipality of Waterloo. I believe you know

the procedure. You have 10 minutes to speak and five minutes for questions. You can start when you're ready, sir, and please, before you start, if you can state your name for Hansard.

Mr. Ken Seiling: My name is Ken Seiling. I'm the chair of the regional municipality of Waterloo. With me are Thomas Schmidt, commissioner of transportation and environmental services, and Eric Hodgins, who is the manager of water resources protection.

We've been a long-time leader in the area of source water protection, and we understand the importance of this and fully support the efforts of the government to move to it. When Justice O'Connor was doing his travels around the province, he actually came to the region as his first stop, and many of his recommendations and concerns are incorporated into his report, which we took away from the region of Waterloo.

We have had a long history of this. We've invested almost \$20 million to date in doing groundwater protection. So we come here as a friend of the intent of the act, but we also come here to raise some concerns about the implementation of the act and have some serious concerns about the implementation areas.

We are the largest community in Ontario to rely predominantly on groundwater, and that explains our interest in this particular topic. Our vulnerable areas cover approximately 65% of the three major urban areas of the region.

We've done this because, as some of you may recall, back in 1989 the Uniroyal groundwater contamination was the first loss of a major water supply in Ontario through a large-scale industrial contamination. Since that time, we've dealt with nitrate contamination in wells; more recently an urban well field in the city of Kitchener has been shut down, with 1,4-dioxane; we've also worked very hard at reducing salt levels in the water supply, because we see that as an increasing issue for us.

To do that, we've developed programs. These include a comprehensive database with mapping and data gathered, about 30,000 pieces of information, which are used daily for planning, public health and water services within the region. Our rural water quality program was started in 1998, after the province had abandoned the field at that time. We began to put municipal money into groundwater protection and actually extended the program into Wellington county, on behalf of our people. It was used as the basis for the development of the subsequent provincial program and also the GRCA work. We've done mapping and wellhead protection policies and incorporated these into our regional official policies plan and are actively diverting growth away from wellhead areas and protecting them. We've had a policy of developing alternatives and reduce road salting. I think our track record in this area goes unchallenged internationally and nationally. People come to our region to take a look at the programs, and we've participated with the province in the development of much of this work.

There are some general observations we could make, though, in that regard, and one is that the one size doesn't

fit all, even within a watershed. We are concerned that the application of the watershed principle in fact could hurt and hamper efforts, particularly in the region of Waterloo, if it's not managed in the correct way. We need to look at all barriers, not just groundwater protection. There is a variety of barriers that can be used in the protection of drinking water, and you really need to understand your sources better to have the appropriate goals. In that context, our responses are largely issues of implementation. We fully support the intent of where this is going, but we are very much concerned with some of the implications of implementation that we think could be damaging to the programs in the region of Waterloo and actually set us back.

The concept of source water protection makes sense. We want to make sure that we protect these resources, so there are a number of points we make here. First of all, and one I heard just a little bit earlier, the act is deficient in that it doesn't define what constitutes a significant threat. That will be developed later, but it is problematic that it isn't there. Without a definition, municipalities cannot assess the implications. Significant threat is the trigger for mandatory risk management and access to the permitting and notice provisions in the bill. We are concerned that if the definition is too broad, encompassing so many threats, implementation will not be achievable economically or practically, or if it's too narrow, that municipalities would be unable to access the provisions. Also, there is no clear indication of what level of action will be required to reduce the risk to an acceptable level. Ideally, the use of the permitting and notice provisions in the act should not be mandated or linked to a definition of "significant threat," and the decision to use these provisions should be left solely to the municipality. Municipalities should have the authority to determine for themselves the greatest threats to their water supply and to focus on these first.

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Secondly, the Clean Water Act and source water protection is but one step, albeit a key part of the multi-barrier approach. It makes little sense to mandate the expenditure of significant resources on source water protection, to the neglect of water treatment or other barriers. Cost and practicality must be considered when determining the effective allocation of monies to source protection and treatment. Given the uniqueness of each municipality's water supply, municipalities need to have the authority to determine where resources are best spent, where we get the best bang for the buck in terms of our water supply and ensuring safe drinking water. The act should appropriately recognize that source protection is one barrier in a multiple-barrier approach and that the economical provision of safe drinking water requires that municipalities decide which barriers warrant the most attention and funding.

Thirdly, the responsibility for implementation and impacts of any source water protection initiatives will reside primarily with the municipalities. Accordingly, the assessment of risks and the development of source

protection plans should also be done by those most impacted: the municipalities. The role of the SPC, the source protection committee, should be to ensure that watershed-based information is available and shared between municipalities, coordinate plans between municipalities if overlap exists, and provide technical assistance, as required. If SPCs are implemented as currently envisaged, then the internationally recognized program being implemented by our region could be sidetracked or diluted by a legislative requirement to reach agreement amongst stakeholders that would not be impacted by the region's wellhead program.

If I can give that to you in simple terms—we've discussed this with the minister in the past—if we do this on a watershed basis, theoretically the committee has 16 or 20 members. The way it's constituted, the region would have one person on that committee, and the 19 people from the rest of the watershed could in fact change the program for the region of Waterloo even though it doesn't suit the region of Waterloo. So we're very much concerned that this cookie-cutter approach to these SPCs in fact could be very damaging to our groundwater protection efforts in the region of Waterloo. That's a simplistic version, as I understand it. We've worked with the GRCA on leading-edge stuff, and we believe there should be flexibility in the way this is crafted so that we can have the outcomes that are necessary for our programs.

Fourthly, a mechanism for providing long-term, sustainable and predictable funding is needed. The province has only committed to providing funding for the planning component, not implementation. The funding being provided is one-time funding for specific projects rather than sustainable and long-term funding that will allow municipalities to develop meaningful source protection programs. The current funding approach frequently requires municipalities to shift priorities and spend funds over a very limited period of time that may or may not be a priority for them. Water user fees should provide a significant portion of the funding for source protection, but there should be a provincial funding component.

The definition of "significant risk," which the province intends to develop in the regulation, could have significant financial implications for some municipalities. We believe there should be some recognition for those municipalities that have done good work already. I've said here at committees before that quite often we reward people for not doing things, then penalize those who have done the good work. I think that's a case in hand here where a number of us—an officer was here before us—have spent considerable resources, and we believe that should be recognized. At least do not force us to do the work all over again and force new expenditures on us. So we're very much concerned with how the funding mechanisms work and how people are treated in the overall implementation.

Finally, the current approach to only enable use of the permitting and notice provisions for significant risks may have considerable economic consequences for the region

and for other communities. We went through an extensive plan in 2000, mapping and proposing changes in our official plan. I can tell you that the interest in how one property is treated versus another created some significant issues. For example, if you begin to sterilize whole communities or don't allow for other mitigation measures, it has significant economic impacts on communities and they may never be able to develop lands or areas economically in their communities. We need to be aware of that and make sure this isn't so ironclad that we straitjacket people by not finding other solutions or dealing with some other economic issues.

One further issue is that in the past, contamination issues such as gasoline have seen the implementation of provincial standards. We believe that the province should also be doing that in other areas, for example, TCEs, which is a very common one because it's found regularly.

I think I've gone through the bulk of the points. We really want to say that we think there needs to be some coordination with other provincial legislation and that there needs to be some flexibility for those communities that are doing good work. They don't need to have the clock turned back on them.

Everything is summarized here. I think I've used up my time. Thank you very much.

The Vice-Chair: Thank you for your presentation. Now we open the floor for questions. First, Mr. Tabuns.

Mr. Tabuns: Thanks for coming down today and making this presentation. Your efforts were cited in the minister's comments earlier today about the cost of implementation at about 75 cents per month per household. Do you see significant change in the cost to you if this bill were implemented as written?

Mr. Seiling: Maybe I'll let the staff answer, but our concern is that if these committees develop new guidelines or a new plan for the region—or the province develops new plans—and say, “You've done it this way but we want it done another way,” then we have to go back and do everything over again or we're set back a couple of years in our progress. That's our concern.

Mr. Eric Hodgins: We do see additional expenditures being required. The current 75 cents per month that was quoted does not include a lot of the regulatory components, the monitoring components, the inspection or the enforcement components. None of the part IV components are in there, and we have not as yet implemented any extensive land use purchasing programs, so that would substantially increase costs, should we need to do that, around some of our more sensitive areas. We expect, based on the legislation and depending on the definition of “significant risk,” considerable additional costs.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thanks, Your Worship, for coming in; we appreciate that. On behalf of all of us, we want to commend the region of Waterloo for being such a leader in this province. I think you're concerned to make sure that this bill does not make you have to reinvent the

wheel, where you've actually been the leader for the province, as well the county of Oxford, which the minister also mentioned. You're asking that the definition of “significant drinking water threat” be included in the bill. Our concern would be—right now we're saying we're contemplating that that would be through regulation. What is the operating premise that your region uses in regard to what you consider to be a significant drinking water threat? Can you give us an example of where your paradigm is, in your region, as to what is significant? You're asking us to define it, so I wonder how you define it.

Mr. Hodgins: Our definition of “significant threat” is derived largely from our monitoring of our drinking water systems. When we identify, let's say, that we have nitrate problems in some of our supply wells, then we will look at the nearby, adjacent farms to try to see which ones of those are implementing the necessary appropriate management practices to deal with things. Our take is that most of the significant threats are already in the groundwater in our environment, that the significant threats—the chlorinated solvents, the nitrates put on the farmers' fields—were put in decades ago. We have deep municipal systems. So the idea of an acute, significant threat that we would need to take action on immediately—we don't feel that there are very many of them. But depending on the formula that's derived through the regulation, we could be forced to implement action even if we don't feel that there's actually a significant threat existing.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you for your presentation. You indicate that municipalities like yours should have the authority to determine what the greatest threats are. Twenty per cent of your water comes from the Grand River. I imagine for the city of Kitchener-Waterloo probably 100% comes from the Grand River.

Mr. Hodgins: Twenty per cent; it's a mix.

Mr. Barrett: Twenty per cent in the city as well; okay. The question is a supply question and a quantity and a quality question. The region of Waterloo projected growth for the next 25 years is something like another 200,000 people. Can the Grand River handle that? Can the wells in your area handle another 200,000 people in that part of the watershed that you share?

Mr. Thomas Schmidt: We have done significant study in that area and completed a project in 2000 that looked at our growth requirements to 2041. Now, with Places to Grow, that has actually shifted to 2031. We developed a plan that uses our local resources and will allow us to grow until about 2035 using local resources for both water and waste water. We are looking in the longer term at the possibility of a pipeline to one of the Great Lakes, whether that be Lake Erie or Lake Ontario. So we do have enough at least for the growth that's projected in Places to Grow with our local resources, and for growth after that we may be looking at resources from the Great Lakes.

Mr. Barrett: Would that pipeline be available for other centres beyond the major city, say irrigation-based agriculture or other smaller towns?

Mr. Schmidt: Definitely smaller towns. If we're going to Lake Erie, there are other communities along the way, so we'd be looking at a plan that includes Brantford, Guelph and other communities as well. It would not just be a region-of-Waterloo solution; it would look at the watershed as a whole.

The Vice-Chair: Thank you for your presentation.

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CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Vice-Chair: The Canadian Environmental Law Association? I believe you know the procedure: 10 minutes for speaking and five minutes for questions. You can start whenever you are ready.

Ms. Jessica Ginsburg: Good morning. My name is Jessica Ginsburg, and I'm a lawyer with the Canadian Environmental Law Association, also known as CELA. CELA is a public interest group established in 1970 for the purpose of using and improving laws to protect human health and the environment. CELA is also a legal aid clinic which represents low-income citizens and groups in environmental cases.

For the past two decades, CELA's casework and law reform activities have focused on drinking water quality and quantity issues. More recently, these activities have included:

- representing Concerned Walkerton Citizens at the Walkerton inquiry;
- preparing issue papers for part 2 of the inquiry;
- convening public workshops on source protection across Ontario;
- facilitating the development of an Ontario-wide network of interested NGOs; and
- participating as a member on Ontario's source protection advisory committee and implementation committee.

I'm here today to speak with you about the importance of passing and implementing this much-needed legislation as soon as possible. The events at Walkerton were primarily caused by insufficient regulatory oversight of Ontario's drinking water. However, the immediate problem ultimately began at the source: A shallow municipal well located next to a farmer's field was infiltrated by E. coli, which then entered the town's water supply. The results, as all of you are no doubt aware, had devastating impacts on this community. It is worth noting that Justice O'Connor's first recommendation in part 2 of the Report of the Walkerton Inquiry concerns the need to protect drinking water sources across Ontario.

Over the course of the next week, you will be asked to consider dozens of technical amendments to Bill 43, supported by a wide range of differing perspectives and rationale. From our perspective, the issue is actually quite straightforward: The purpose of the bill is to protect

existing and future sources of drinking water. Any amendments which weaken this bill will weaken protection of Ontario's drinking water.

In particular, any weakening of the conflict provisions contained in part III of this act would undermine the effectiveness of the act as a whole. Part III specifies that in the case of conflict with another law, the provision which provides the greatest level of protection will prevail. This and other conflict provisions provide the minimum framework necessary to ensure the act is applied in a consistent and meaningful manner.

While the importance of maintaining the act's current protections cannot be overstated, there are certain provisions which should be amended to provide stronger, more complete coverage. I will discuss three such amendments in relation to the precautionary principle, public participation and timelines.

First, the precautionary principle: Justice O'Connor recognized that the precautionary principle should play an integral role in risk management decisions affecting the safety of drinking water. Furthermore, the final report of the advisory committee specified that all watershed-based source protection plans must take a precautionary approach. Despite these strong recommendations, the Clean Water Act does not include a single reference to the precautionary principle. As you heard from Minister Broten this morning, the Clean Water Act is intended to be inherently precautionary. While this is a welcome message, it is not enough. We recommend that the precautionary principle be explicitly added to the act as both a guiding principle in section 1, and as an operationalized component of the source protection plans in section 19. The recommended language for these amendments is included in your handouts. The amendment to section 19 is particularly important, as it provides a concrete way for the principle to be used in managing local threats. The precautionary principle is also relevant in the context of stronger Great Lakes protections, since our scientific understanding of cumulative effects and invasive species is still evolving.

Now, on to public participation: The success of source water protection rests with the rural and urban citizens of Ontario. It is the public who is best able to identify local threats and propose workable solutions. Members of the public should therefore be engaged early and often. The legislation is weak in this regard, since it contains few mandatory provisions around public participation. Specifically, it fails to provide the public with an opportunity to comment on the proposed terms of reference and assessment reports before these documents are finalized. The public should also be guaranteed the opportunity to participate on source protection committees in a meaningful manner. The act and regulations should include commitments to public education. Finally, the public requires transparency in order to fully trust, understand and contribute to the process. Transparency, in turn, demands public access to all relevant documents as well as clear information on how and why risk management decisions are being made.

Finally, I'm going to quickly address timelines. This act has been a long time in coming. The need for source protection was explicitly identified four years ago by Justice O'Connor, and many municipalities, as we've heard today, have been working hard to pursue source protection as best they could under existing legislation. In order to ensure that source protection becomes a reality before another Walkerton has a chance to occur, this act needs to be passed as soon as possible. Furthermore, timelines need to be inserted into the act so that the process does not stall as a result of local politics or competing priorities.

You already heard from the Ontario Medical Association this morning regarding the need for timelines to be addressed in section 48. We would take this a step further and recommend that, at a minimum, timelines be set for establishing source protection committees, completing terms of reference, assessment reports and source protection plans, and implementing risk management responses. There should also be factors included which govern situations in which the minister may grant extension of these timelines.

Through CELA's involvement at the Walkerton inquiry, we have seen first-hand the devastating effects which contaminated water can cause in a community. The economic burden alone is staggering. There have been increased health care costs, water treatment expenses, employees who are too sick to work and disrupted businesses. There were also extreme human costs: Seven people died; 2,300 became ill. Many of these illnesses are long-term and the effects are still felt today. Clearly, neglecting source protection comes at a high price.

You will hear concerns voiced repeatedly over the next week about the financial costs of implementing source protection. Municipalities require support for the added responsibilities they'll be assuming, and land-owners require compensation for the improvements they'll be required to make. While these costs are substantial, they do not begin to compare with the costs of doing nothing. It is therefore critical that the province identify a sustainable and reliable source of funding.

Fortunately, the implementation committee identified a number of new, viable funding mechanisms which would help cover the costs of source protection. These mechanisms include water-taking charges, water rates, pollution charges, incentive programs, general revenues and stewardship approaches. Many jurisdictions have already adopted these tools with successful results. For example, a form of pollution charges has already been implemented by a large percentage of municipalities in Ontario whose sewer use bylaws require emitters to pay a surcharge for extra-strength sewage. Pollution charges have the dual advantage of raising revenues and decreasing harmful pollutants.

The act should be amended to include a dedicated fund for source protection implementation. Additionally, government should develop a sustainable and reliable approach to funding which utilizes the range of new tools identified.

With appropriate funding and a strong commitment by government, the Clean Water Act can significantly improve the condition of Ontario's watersheds and drinking water supply. For this reason, CELA would like to express its support for the overall direction taken by this bill and urge you to consider strengthening the bill through the amendments proposed.

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The Vice-Chair: Thank you for your presentation. Parliamentary assistant?

Mr. Wilkinson: Thank you, Jessica, for coming. It's good to see you again, and particularly, on behalf of all of us, thank you for the work CELA has been doing since Walkerton, assisting the province and all residents in trying to come up with the best way of protecting our drinking water.

I guess my concern is about the question of transparency and public education. Specifically, you're asking for us to get into the legislation the need to make this public. My understanding and my reading of the bill is that the proposed legislation contains requirements for the source protection authority to ensure that the terms of reference, the assessment report and the source protection plan are all made available to the public. So that's right in the bill. But you're saying that in the bill we need to go beyond that. We've always said that it's our intention to work with the local source water planning committee so that this information can be shared appropriately, based on every watershed, as opposed to a top-down requirement on that. Are you afraid that the source water protection committee will somehow do this in secret and only tell people after the fact what they've decided?

Ms. Ginsburg: My concern is, I guess, twofold. First, while it is certainly our hope that the source protection committee will interact with the public in a meaningful manner and include public representation, that is not currently in the act. There needs to be both public representation on the committee but also, hopefully, on any working groups or subcommittees which inform the various parts of that committee's work. Secondly, the source protection plans, as currently described in the act, are made available for public comment prior to being finalized. However, the assessment reports and terms of reference are not; they're made publicly available after the fact, which, in my mind, is not appropriate and not consultative enough to fully gather the public input on those documents.

Mr. Wilkinson: So you want an assurance—because that goes to the minister—that after it becomes public but before the minister makes a decision, there should be an avenue for the public to have input.

Ms. Ginsburg: Right. Essentially, the specific amendments which I've recommended in the text provide a parallel process.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you to CELA for testifying to your section on public participation. We know there's a protest group against this piece of legislation outside right now. I don't think they'll be participating in these

hearings today, anyway, but five days have been slated for hearings. There is a concern in rural Ontario, farm Ontario, that hearings are being held in August. It's very difficult for rural people, especially people working on the land, to come into the city or other cities during that time of year.

I contrast that with the nutrient management hearings. By the time that legislation was passed, this Ontario Legislature and the government of the day had conducted 18 days of hearings. How does that square with your call for public participation?

Ms. Ginsburg: I would say that it is unfortunate that certain groups and individuals did not have an opportunity to present. I must admit, though, that the government has been extremely consultative leading up to these hearings. We've been consulted numerous times by the minister's staff both as a group and as a larger network of environmental and citizens' groups. So I would say that, yes, while it is unfortunate that these hearings could not have been longer and that the timing was such that some of the farmers were not able to attend in person, hopefully they do have an opportunity to submit written comments. I must say that I'm pleased that the hearings are at least being held at some point this summer, because I'm very anxious for this bill to be passed as soon as possible.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Ms. Ginsburg, thanks very much for coming in and testifying today. One of the concerns that I have with this bill is the lack of definitions for some really key pieces here. Was that considered by your organization? Do you have suggestions to the government for actual definitions?

Ms. Ginsburg: Yes, it has been considered by CELA. In fact, a number of years ago, when the first draft of this legislation was put onto the EBR for public comment, we submitted comments to that posting which included draft legislation including a lot of our suggested definitions. Many of those definitions are not currently in the act; hopefully, they will be adequately dealt with in the regulations. However, yes, it would be a preference that those key definitions be included, according to our submissions made at that time.

The Vice-Chair: Thank you, Ms. Ginsburg, for your presentation.

Thank you, Mr. Tabuns, for that question.

FRIENDS OF THE EARTH CANADA

The Vice-Chair: Now we have Friends of the Earth Canada.

Before you start, please state your name. I guess you know the procedure.

Ms. Christine Elwell: Thank you, Mr. Chair. My name is Christine Elwell. I'm a lawyer and senior campaigner with Friends of the Earth Canada. In view of the approaching lunch hour, I promise to keep my remarks brief.

Friends of the Earth Canada is a charitable, national non-profit organization with a mission to protect the environment and work with others in research and advocacy. Friends of the Earth Canada is a founding member of the largest international network, Friends of the Earth International, in over 71 countries, with 1.5 million members. Many of them work on water campaigns, but none has the opportunity that we do today to support and improve this bill. I'm going to touch on a couple of matters: early implementation date; the need for water conservation plans; environmental principles; source water protection; and public participation.

Allow me to emphasize that FOE Canada does support the bill and seeks its early implementation. The five-year implementation date that's been suggested does not seem to be appropriate, given the critical nature of the topic. We would ask that it begin to go forward as soon as possible, indeed as early as two years from its enactment.

On the need for water conservation plans, allow FOE to join with Sierra Club of Canada and others in supporting the need for water quality and quantity to go together, particularly in view of climate change and increasing demands on sources of water. We need to be setting up a flexible system that can adjust source protection plans to compensate for changes of level, and in the public interest. Again, we would support amending section 13 so that assessment reports in crafting water budgets take into account the need for and implementation of robust water conservation plans.

FOE Canada also joins with my colleagues; you've heard today all of us speak on the need for basic environmental principles to be included in the act. Indeed, Minister Broten today said that the bill is based on concepts of pollution prevention and the "precautionary principle." We need to put that in the bill. Indeed, Justice O'Connor was pretty clear that that needed to happen, yet right now the only reference is in section 98 under "Technical rules." Rules and definitions may be developed later that might include basic principles as a guide for conducting, for example, risk assessments. But let me submit to you, honourable committee, that the entire purpose of the act could be defeated without reference to how the act is administered.

For example, local permit officers appointed by municipalities to conduct and approve risk management plans—these plans and these approvals by permit officers could allow for activities to occur in vulnerable areas. Unless that local permit officer is directed by administration of the act to have precaution and cumulative impact prevention in mind, what's to guide that permit officer in approving risky activities?

To summarize, we would suggest amendments to section 1 of the bill to say that the purpose of the act and its administration is to protect based on the precautionary principle, taking into account pollution prevention and cumulative adverse ecological and human health impacts for existing and future sources of water.

I'll now turn to source water protection for Ontario. I submit that this is fundamentally a serious problem with

the bill. The very first recommendation that Justice O'Connor made in the Walkerton inquiry is, "Source protection plans should be required for all watersheds in Ontario." Indeed, Minister Broten today said that all people deserve clean water; clean water is a "fundamental right." Sadly, however, the scope of Bill 43 very narrowly focuses on municipal drinking water sources where there are conservation authorities, leaving individual well users and entire areas of central and northern Ontario unprotected from source water threats. The constituencies of your colleagues in central and northern Ontario deserve the same fundamental right to source water protection as your constituents do here in southern Ontario. This legislative gap exposes a serious environmental justice issue. Constitutional challenges based on equity and equal protection under the law are surely anticipated.

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While the bill does leave open the possibility that the minister "may," by regulation, establish source water protection areas and "may" designate a source protection authority where a conservation authority does not exist, it is submitted that this possibility does not meet Justice O'Connor's or the Ontario public's expectations. When I asked officials why the gap, why the discretion, why the discriminatory treatment between southern, central and northern Ontario, the answer was, "Ah, we'll phase it in. It's too much all at once. We'll see in five years." I'm sorry; you don't phase in fundamental rights. You either have them or you don't. As you roll out the act and in the administration of the act, if some areas can prosper and develop quicker, fine; if others take longer, fine; but don't start off with express legislative language that disenfranchises 80% of Ontario.

While Conservation Ontario has made some preliminary proposals to establish new conservation authorities, they're in draft, more public consultation is necessary and they clearly do not cover the entire province. Our recommendation is that you amend section 5 of Bill 43 and make it mandatory that the Minister of the Environment establish source protection areas for all watersheds in Ontario providing drinking water and actively serve as a source protection authority where no current conservation authority exists.

It follows that section 24 of the bill be amended so that there is a mandatory—as opposed to the current discretionary—duty on the minister to confer, indeed the minister has a constitutional obligation to consult, with First Nations and their governments on the establishment of source water protection areas and plans for watersheds where there are no current conservation authorities. If you hear nothing else, this is the point to be made today about amending section 5.

Let me turn, then, to public participation and education. Justice O'Connor was convinced that the local planning process was the key to effective implementation. The bill does provide some opportunities for the public to participate in the appointment of committees and draft plans. However, these measures are not enough.

We make a number of specific recommendations to the bill on page 6. You'll see that the flaw of not providing source protection for all of Ontario then permeates through the rest of the bill; there's a big chunk: sections 7 to 22. All the public input parts don't apply if there isn't a current conservation authority. So I would ask you to look at that carefully.

Let me take the last minutes I have to talk about the need for an office of the public adviser. Justice O'Connor was clear that the public needed to be informed in order to have meaningful participation. Indeed, we ask that the Minister of the Environment establish an office of the public adviser under the auspices, perhaps, of the Environmental Commissioner of Ontario.

The public needs information and assistance to be able to identify vulnerable source protection areas as well as threats to those drinking water sources. I recall Bruce Davidson of Concerned Walkerton Citizens saying, "We're going to need to go town hall to town hall to town hall to educate people on how to engage." So this recommendation on an office of the public adviser may seem ambitious, but I think it's necessary so that the public has the capacity they need, including landowners and including rural Ontario and farmers. Make it a neutral office that can provide the kind of information, capacity and assistance each of those constituents will need to be able to manage this portfolio.

Allow me to conclude. Again, let me say that we support this legislation. Our recommendations are intended to be helpful. We'd be happy to help with assistance on drafting amendments. Let me say also that this consultation process has been very good. I'm very impressed with the amount of outreach that we've had, but it's time to move on and implement as soon as possible.

Thank you. I'll take any questions.

The Vice-Chair: Thank you, Ms. Elwell, for your presentation. We'll start with Mrs. Munro.

Mrs. Julia Munro (York North): Thank you for coming here today. I wanted to ask you a question. I'm asking for a response, really, with regard to some of the issues that other groups have raised. You alluded to the whole issue of part of the province in, part of the province out. There's been some conversation amongst the presenters with regard to the role of the conservation authorities versus the municipalities, and obviously across the province we have municipalities. So I wonder if you could comment on what you see as your position on the issue of the administration and governance side in terms of the authorities and the municipalities.

Ms. Elwell: I think it's important that the source protection committees include representation from all sectors, including the conservation authorities, municipal representation and others. I think that's the governance mechanism that will get the right people at the table to be able to move it forward. However, the problem is that you can't always hope that municipalities will form clusters and look after source protection areas outside of their boundaries, as the bill currently allows. So I think

that the groups will need direction from the government in establishing excellent source protection committees that can move that forward. In areas where they're non-organized, in northern Ontario, for example, you're going to need a tripartite committee that includes federal and provincial government representation, First Nations peoples and their governments as well as other stakeholders, to be able to set up the kinds of committees we're going to need to move that forward.

I hope I've answered your question.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Christine, thanks for the presentation this morning.

This has come up a number of times, this whole question of public input. You seem to be satisfied with the consultation to this point. Can you talk about your concerns regarding public input for source protection committees and the expansion of those?

Ms. Elwell: If you look at footnote 20 on page 6, there are very modest opportunities for public participation where there isn't a mandatory need for a source protection area. If it's discretionary when the minister decides whether she wants to establish one or not, the public doesn't have the same rights as the public that lives in an area where there's a conservation authority. It seems to me that there's a bald discriminatory statutory feature of this bill that probably isn't intended. I can't imagine what possible government purpose would be served by allowing 20% geographically of the province to have these rights to input to the authority and 80% not. Some people have speculated that the reason for this two-tier approach to clean water is because government itself doesn't want to have to review its instruments—its permits, licences and approvals—through the source protection plan process, so that there may be an inherent conflict of interest or problem. But surely that wouldn't stand up to constitutional scrutiny. Let's start with a fundamental right for public input as well as the people to source water protection, and then let's roll it out in a way that makes sense. But to build in this discrimination—I can't imagine any purpose is served.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you so much for coming. Following on this point, just for a point of clarification, O'Connor in recommendation 2 was very clear that about 80% of the people live on 20% of the land mass and are in conservation authorities, and he thought that was a wonderful way for us to be able to deliver this across the province.

Your contention is that for the probably less than 20% of the people who live in probably more than 80% of the province, given our geography, somehow they're being treated differently. I think you're aware of the fact that the ministry has spent money canvassing all municipalities in those parts of Ontario that are not covered by a conservation authority to help them self-identify issues so that they would have similar treatment.

My concern is whether your request is practical and whether or not we're going to get to what O'Connor was

talking about, which is the human interaction with our sources of drinking water.

Ms. Elwell: I hear you, and if they're consulting, that's wonderful. But let's say "mandatory." Don't leave it as a discretionary matter: "The minister may establish source protection areas where there isn't a conservation authority." Put in the language "You shall," and it will give impetus for the municipalities to organize themselves and self-identify, as you suggest.

The problem is, if you look at what Conservation Ontario is proposing—there are a couple of new conservation authorities—basically from Lake Simcoe north, it's unorganized. Cottage country: I can't imagine you're not getting lobbied by cottage country that they want the same rights. It's not just the outreach posts of northern Ontario; we're talking a huge constituency that is disenfranchised by this bill. I hear you: Let's work it out as self-identified. But leaving it as a discretionary matter is just asking for a constitutional challenge.

Mr. Wilkinson: We haven't passed the bill yet, so we haven't used that as an excuse not to move forward and spend good money on behalf of the people of Ontario to make sure that all those municipalities that don't fall within the catchment area that O'Connor said would be the best way to do it, through the conservation authority, are being dealt with. I definitely will raise this issue with the ministry.

Ms. Elwell: We did identify—

The Vice-Chair: Thank you, Ms. Elwell.

Ms. Elwell: Please: We did identify 14 regions that could be easily converted into a source protection area—footnote 12.

The Vice-Chair: Thank you. Thank you very much to all the people who attended this morning session with us. Thank you to the presenters. Thank you to all the members from the three parties, and I'm also talking to the Hansard clerk and research.

Now we can recess until 1 o'clock.

The committee recessed from 1202 to 1304.

LAKE ONTARIO WATERKEEPER

The Vice-Chair: Good afternoon, everyone. According to my watch, I guess we're 1 o'clock exactly.

We have with us, I believe, Lake Ontario Waterkeeper. Sir, you have 10 minutes for your presentation and five minutes for questions. You can start when you're ready. Please, before you start, state your name for the committee and Hansard. Thank you.

Ms. Laura Bowman: I thank you for the opportunity to give this presentation today. I'm Laura Bowman. I'm an articling student with Lake Ontario Waterkeeper, and this is Mark Mattson, our president.

Lake Ontario Waterkeeper is a grassroots environmental organization that works to protect the rights of Ontarians to clean water. We're a member of the New York-based Waterkeeper Alliance, with over 100 members worldwide. Waterkeeper is akin to an environmental Neighbourhood Watch program. Waterkeepers are part

investigator, scientist, lawyer and advocate for watershed users.

We thank the standing committee on social policy for the opportunity to give this presentation, and we would like to advise you that our written submissions are forthcoming. They're not available at this time, but we've handed out speaking notes for your reference.

I would like to begin this presentation by emphasizing that Lake Ontario Waterkeeper wants to like Bill 43. We believe that everyone in the Lake Ontario watershed has a right to clean drinking water. However, after careful consideration of the bill, we believe that it will not effectively protect drinking water in Ontario.

Bill 43 is not environmental legislation; it is a planning tool. Bill 43 impacts only drinking water threats to municipal water systems predominantly in southern Ontario. In Ontario, we already have wonderful environmental laws that can protect drinking water quality, and they are not well enforced. Bill 43 has the potential to undermine what we already have.

For example, the Environmental Protection Act prohibits the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect. The Ontario Water Resources Act also makes it an offence to discharge any material of any kind into any waters or in any place that may impair the quality of water or any waters.

These acts protect our rights not only to clean drinking water but to clean water. These acts already prohibit activities that might be drinking water threats under Bill 43. Bill 43 merely subjects some of these activities to risk management plans. Under Bill 43, only those activities that may cause adverse effects to drinking water will mean municipal drinking water systems will require a permit.

Bill 43 will make it harder to enforce the Ontario Water Resources Act and the Environmental Protection Act. The source protection plans created under Bill 43 for the protection of drinking water may give the appearance that conservation authorities and municipalities are addressing Ontario's water contamination problems. However, Bill 43 only requires source protection plans to address localized threats to municipal water systems. It will not protect the public's right to fish and swim in Ontario waterways. Lake Ontario Waterkeeper is also concerned that Bill 43 may come to replace the Ontario Water Resources Act and Environmental Protection Act.

Compliance with a source-water protection plan under Bill 43 may give offenders under other acts a due diligence defence. This will mean that contamination of water that impacts swimming and fishing in a waterway without impacting a municipal water system may be difficult to prosecute.

The assessment reports—

The Vice-Chair: Could I ask you to move a little bit further from the mike? It's making some noise. We have a sensitive mike. Whenever you move, it'll catch it.

Ms. Bowman: Okay. The assessment reports under Bill 43 will also potentially politicize pollution. Under

Bill 43, the source protection committees must identify activities as threats and single out vulnerable areas in the assessment report as a prerequisite to regulation under the legislation. These assessments are subject to review by the director.

For contamination issues not identified in the assessment report, this sends a signal that an activity impairing water quality is unimportant because it doesn't contaminate a municipal water system. In the end, this process may produce a political document pointing out priorities that masquerades as a scientific evaluation of what is contamination and what is not.

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Lake Ontario Waterkeeper also submits that Bill 43 is unworkable. There are many drafting problems with Bill 43, but most importantly, it fails to include a reasonable, workable definition of "significant drinking water threat." This term is the heart of what Bill 43 is about. The definition of "significant drinking water threat" requires that a risk assessment be prepared concluding that something is a significant drinking water threat. However, no risk assessment is required unless something is already identified as a significant drinking water threat in the assessment report. As it currently stands, this definition means that no permits can be required for any activities under the act.

Furthermore, failure to identify an area or activity in an assessment report places it outside the scope of Bill 43 from that point on. Once approved, the assessments made in the assessment report are binding on the source protection plan. However, some drinking water threats may not be foreseeable at the time the report is made. The public is unable to comment on the assessment report and therefore cannot draw attention to any issues overlooked by the source protection committees.

To summarize, Bill 43's scheme is narrow and confusing. Instead of imagining an Ontario with clean water, it is a bill that focuses on deciding how little we can get away with to protect drinking water. Lake Ontario Waterkeeper believes that there is nothing wrong with helping conservation authorities identify priorities for ensuring that Ontario watersheds are clean. We are committed to working with Ontario to achieve a better understanding of the state of Ontario's watersheds, but there is a better way. Under the Conservation Authorities Act, conservation authorities can already do research about the state of water quality. Many have already done so. Conservation authorities can also be permitted to regulate local drinking-water quality issues by adding this to subsection 28(1) of the Conservation Authorities Act. This could be accomplished with little difficulty.

Honourable members of this committee, we submit to you that Ontarians deserve clean water for fishing, swimming and drinking. The Ontario ministry has not made the most of existing legal tools to protect our water. Bill 43 is about identifying the bare minimum protections. Bill 43 asks, "What is the least we can do?" We submit to you that Ontarians deserve better. The Clean Water Act could represent a new beginning, but new

clean water legislation will only benefit Ontarians if it goes beyond what we already have. We support clean water protection in Ontario and we hope that this committee will have the vision to imagine a better Bill 43. We urge this committee to reconsider this bill. We urge this committee to take a serious, hard look at what this act represents for Ontario's water quality.

We thank you for this opportunity and we look forward to presenting you with our written submissions, which we remind you are forthcoming.

The Vice-Chair: Thank you, Ms. Bowman, for your presentation. Now we are open for questions. Ms. Scott.

Ms. Scott: Thank you very much, Laura. You did an excellent presentation. We also believe that the Clean Water Act is not going to be implemented or be able to do what it is supposed to do.

You mentioned the EPA and the OWRA, the Ontario Water Resources Act, and you mentioned the Conservation Authorities Act, that there could have been changes made in that instead of bringing a whole new level of bureaucracy.

You also spoke a lot about funding and how we're going to enable municipalities and the agricultural community etc. to accomplish what we all want, which is source water protection. Should the government be establishing a stewardship fund, do you think, to facilitate these changes they want to bring in to assist municipalities and stakeholders?

Ms. Bowman: Conservation authorities are already undertaking this type of research, and while we support funding for adequate research I don't feel really prepared to comment on the actual implementation of this particular piece of legislation.

Ms. Scott: Right, and it's true. I don't think anybody really knows—or if the government knows, it's not giving us the information—how much it's going to cost municipalities or landowners, any ballpark of what it might cost to implement it. And if you can't implement it, then we can't get our source water protection accomplished the way we want to.

Thank you for appearing here today. I look forward to your amendments.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation. It may be the most fundamental root-and-branch critique that we've heard on this bill. Have you had your legal assessment peer reviewed by others in the environmental law field?

Ms. Bowman: Have we had our legal assessment peer reviewed?

Mr. Tabuns: You're saying here that implementation of this act may in fact make it more difficult to act through other legislation, that it would weaken protection of the environment or have the potential to weaken protection of the environment. Have you had other legal opinion review your assessment?

Ms. Bowman: No, we don't have other environmental groups review our legal assessment of the legislation. We read the legislation and we determine from that reading what the law appears to be.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you so much for coming. There are a number of things. One, I say to my friend the critic for the opposition, is I that believe it was your colleague Mr. Yakabuski who said in debate that he thought he had heard from reliable sources it would be \$7 billion to implement. We've been very clear that we don't know that because we're doing the science, but if you have a report that shows it's \$7 billion, we'd love you to table it with the committee because we'd all like to take a look at it.

In my analysis, from what I've heard, this is going to be the most progressive piece of legislation in all of North America. I understand your concerns that it should be made better, but just so that we go on the record, the Clean Water Act will not diminish the powers that the province has under both the Environmental Protection Act and the Ontario Water Resources Act. I know some of us on this committee were part of the process that actually strengthened that act. Though, I guess, hypothetically, one could say that you could use Bill 43 as a reasonable defence for somehow discharging a contaminant into a watercourse, I personally do not see how one could reasonably use that as a defence, to say that somehow you weren't liable for contravening the Ontario Water Resources Act. I can assure you that we've said in this bill that what has primacy at all times is whichever act does the best at protecting drinking water. But that does not absolve people from their requirements under those two very powerful pieces of legislation that have been strengthened.

I do hear, and many have commented, about the need for clarity around the significant drinking water threat, and we appreciate that. It's something that we're looking at. I know that the assessment report, also the terms of reference and the source water protection plan will all be made public so that people will be able to see that. Because it's with the Ministry of the Environment, all those things will have to be posted on the Environmental Bill of Rights registry, which is common practice and legislatively required here in the province.

I do acknowledge your comments about the fact that one can always go further, but we are completing a process that was started by Justice O'Connor and our focus is on being able to do that and moving forward with his recommendations in regard to source water protection. As the minister said at the beginning, that frames the context. We'll be in Walkerton tomorrow. I think all of us in this House feel an obligation to talk there, and right across the province, about the fact that the legacy of that can be transformed into safer drinking water for all Ontarians.

The Vice-Chair: Thank you very much for your presentation.

Mr. Mark Mattson: I think, if Waterkeeper could have an opportunity to respond to my friend from the Liberal Party just briefly, it's that—it was a question. It was question time; no response to the question.

The Vice-Chair: If there is acceptance from all the members, I wouldn't mind—

Mr. Wilkinson: Well, I know you're going to give me a submission.

The Vice-Chair: Also, we have so many speakers who want to present to us and we have many different people, so we are restrained by time.

Mr. Mattson: It's just really important that there be a response to the comment.

Interjections.

The Vice-Chair: Okay.

Mr. Mattson: Thank you very much. I'm not sure who we're supporting here at this point, but just briefly on those two points. There's one way to correct the legislation currently if it's not going to be used as a defence. You can have that brought before the Attorney General's office and ensure that there's a clause put in there that indicates that this is not used as a due diligence defence if in fact there's a breach of other legislation—the Ontario Water Resources Act and EPA. It's not currently in the legislation. Secondly, Justice O'Connor did talk about mandatory enforcement, moving from voluntary enforcement, of the Ontario Water Resources Act and the EPA as well. Really, that's an important part of what protecting the environment in Ontario is about.

This legislation is a nice thing to do. There are real concerns with respect to drinking water in Ontario, and you need to plan to protect that, especially those areas that are most at risk. But at the same time, we're very concerned that, the way it has been drafted, it tends to take the emphasis off those other areas protected by the EPA and the Ontario Water Resources Act. That's our concern. Thank you.

The Vice-Chair: Thank you very much for your presentation.

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ONTARIO FEDERATION OF AGRICULTURE

The Vice-Chair: Now we'll call on the Ontario Federation of Agriculture.

I'm wondering if you know the procedure. You have 10 minutes to speak and five minutes for questions.

Mr. Ron Bonnett: Plus about two extra minutes, isn't it? Anyway, my name is Ron Bonnett. I'm president of the Ontario Federation of Agriculture. I think most of you know that we represent about 38,000 farmers across the province. You have a written presentation. I'm not going to stick strictly with that; I'll make my comments around the key points.

I guess the first thing I wanted to say is, listening to the minister this morning, I think there is a real urgency for this committee to take a look at the recommendations that are being put forward and recognize that this legislation could have a major impact on farm and rural communities, from my perspective. The amendments are necessary in order to make sure that you have effective results.

At the outset, I can clearly say that the farm community supports initiatives on clean water, but we have to have an approach that's effective, an approach that works. Our history has been that, working with things like the environmental farm plan, the nutrient management plan and stewardship initiatives, where we provided the incentive and the tools, we've been really effective at putting in things that were designed to mitigate risk. That's one of the concepts that we have to get around if this whole process is designed to mitigate risk. Even with some of the terminology that you've used, I think we have to bear that in mind.

Going to the specific points in the presentation, in the first one, we talk about the purpose statement and multi-barrier approach. It all gets to the focus of what the legislation is about. O'Connor was fairly clear, and I think we, from the farm community, are fairly clear, in saying that the focus has to be on municipal drinking water sources. If you design things too broadly, you're likely not going to address the target you want to address. Sure, there are lots of private wells in the province that need some work done on them, but you use a different tool box for that. You do not use a 9/16-inch wrench to fit a 3/4-inch bolt; you've got to make sure that you have the proper tools. This tool kit should be designed strictly to address municipal drinking water issues.

The whole idea of the purpose statement is to focus in on the fact that it's to look at municipal drinking water sources. It's designed to make sure it's a science-based approach to dealing with those risks. It should be stated that it's clearly designed to make sure that there's funding and research, and it should be clearly stated as well that the whole multi-barrier approach is really looked at. Just to say that source water protection would protect drinking water is not right. We could have source water protection legislation in place designed for looking only at the source, and that wouldn't have solved the problem in Walkerton. There was a well there located in the wrong place, there were chlorination devices that weren't working and there were a number of other things with regard to staff. If any of those are not working, it's not right. So I think at the start the purpose of the bill has to clearly state that it's about source water protection, but there are also a number of other multi-barrier issues that have to be addressed.

Moving into definitions, the terminology has to be very clear. We heard from presenters earlier this morning that consistency was a real concern: How is it going to be applied across the province? If you go through terms like "exposure," "risk," "pathway"—even the term "pre-cautionary approach": There are all kinds of different interpretations of what that means. If it means putting something in place that's going to assess risk and try to take steps to avoid it, that's one thing; but if it means trying to exclude all of this, that's likely not possible. So I think we have to be clear, that those terms are really clear.

The issue of appropriate levels of compensation has been mentioned a number of times. I think, from the farm

community side, there are two aspects: (1) What is the direct cost going to be to the individual farmers affected? (2) As a general taxpayer, what is going to be the cost to rural Ontario communities?

I think one of the things that really brought it to my mind was that a few weeks ago as I was flying into Toronto during a rainstorm. As I flew over miles and miles of farmland, what I saw was water going on that earth and slowly percolating and filters that went to the aquifers. At the same time, any runoff was going through wetlands, bush and streams, with a purification process that's designed to purify the water going into the Great Lakes. At that same time, I was flying over an urban centre that had the rooftops and the storm sewers and parking lots where all that water was being funnelled straight into the lake.

On the issue of compensation, the principle has to be: All of Ontario society is benefiting from this. Ontario rural communities, especially farmers, are providing that filtration and the clean water so that they have that clean water to build those communities. There has to be a mechanism to get that money back, and we're proposing some type of a stewardship fund.

Permits, inspections and enforcement: We're concerned with the whole permit approach. I was pleased to hear the minister say this morning that they're moving toward a risk officer type of approach. That actually fits in with the types of approaches we've used in the past, and we find that they work. If you go to a permit type of approach, you're setting it up that it's regulations, rules and confrontation. If you go with a risk management approach, you're working with something that, "Let's see what we can design to make it work."

Consideration of social, cultural and economic impacts: This is one of the things that I think should be included in the terms of reference in the bill. The terms of reference really have to clearly look at what the total costs are going to be. This isn't unusual. We have a Drainage Act that talks about a process that's defined so that all of the economic, cultural and environmental considerations are made. This act should be clear in defining how it moves ahead as well so that we don't need to get into that situation where there's one kind of a source water protection plan in one community and a different type in another community.

The interim period: Right now, there are provisions in there for an interim period. It's our belief that there are already tools under the Environmental Assessment Act to deal with something that's an immediate threat. If there's something that could pose a risk, why wouldn't you use the process defined to use that risk and maybe use it as the pilot as you move ahead?

Authority of source water protection committees is another issue of concern. We have some confusion as to whether the conservation authorities have a lead role or a subordinate role toward the source water protection committees. In our view, those source water protection committees should be the ones in charge. The Conservation Authority should have a supportive role in

making sure it's happening, because it almost creates a conflict if you have the people driving the process as the ones who are going to implement it in the end. I think that would clearly define the roles for those.

As well, with the source water protection committees, one of the other issues that come up is that there may be an ongoing role. If they design a plan and the conservation authorities are responsible for implementing it, who's going to make sure that they follow through on that implementation? We don't see that addressed as one of the issues.

One more issue that came up in our review of the legislation—and again, it goes to the broader context of the legislation—was how conservation and water efficiency are dealt with. That should be inherent in any source water protection plan: the activities taken by municipalities to ensure that they reduce the amount of water used. If they don't do that, it makes a tremendous impact on what type of an area has to be protected. All of a sudden, if you're doubling the water consumption, it's going to have an impact on the source area that's going to be required to be protected. So you have to take a broad, overall view.

Finally, the appeals process: We believe that there has to be a rigorous appeals process, as these plans come through, to make sure that all things are addressed from the concerns of cost, environmental sustainability and making sure that the communities can implement what's needed.

With that, new Chair, I'll turn it over for questions.

The Acting Chair (Mr. Parsons): Thank you, Ron. We have five minutes for questions, and we will start with the third party.

Mr. Tabuns: Thank you for coming in today. I appreciate your commentary.

Water efficiency and conservation: What drove you to put this in your recommendations?

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Mr. Bonnett: One of the key things is that we do have a staff hydrogeologist who works for our organization, and one of the things that came to their mind is that when you're trying to define a protection area, one of the critical things that determines that area is how much water you're drawing. The harder you suck, the farther back you've got to go in the system to protect that water. They saw it as very unusual that you'd be putting a source protection plan in place that looked at consumption of water and not take a look at what you could do to reduce that consumption. That's why it came forward very quickly.

The Acting Chair: The government?

Mr. Wilkinson: Thank you, Mr. Acting Chair. I just want to thank the Ontario Federation of Agriculture for coming today and note that the OFA and other farm organizations, but particularly the OFA, have been very, very helpful to the government of the day over this whole process, having input and representing the interests of farmers in Ontario. It's much appreciated. I know some of the work that you're in support of is because of the

strong advocacy of the OFA in the past and that you're working with us right now.

On the question of compensation, I just want to get a comment about recommendation 16. O'Connor was quite clear, I thought, that when you look at the question of stewardship, really, the lead on that would be OMAFRA, supported by the MOE, as opposed to the MOE supported by OMAFRA. Would it be the OFA's position that OMAFRA would be in the best position, as the government ministry, to define what a farmer is and bring in those kinds of stewardship tools that we're using in other parts of agriculture, environmental farm plans and things like that?

Mr. Bonnett: Actually, it hasn't been discussed as a policy, but my personal opinion is, I don't think it matters that much where the funding comes from. My initial response would be that if the money is to support an environmental initiative, it should come from the Ministry of the Environment. There are a number of drains on the agriculture ministry already that are outside of the environmental field. I think we have to start looking, when we're looking at funding agriculture, at the health benefits agriculture provides, at the environmental benefits that agriculture provides, and fund them out of the appropriate ministries so that some of those core things that we have in the Ministry of Agriculture and Food are protected.

That being said, I think the Ministry of Ag and Food should be involved in helping design the funding programs that are there, and we might be able to use some of the current infrastructure to help flow the funds. We have soil and crop associations that are set up and delivering environmental programs. We could use those as mechanisms to help flow that funding.

The Acting Chair: The official opposition?

Mr. Barrett: Thanks to the OFA for the testimony. As you point out, this legislation makes no mention of any funding assistance. There are lots of sticks in this legislation and no carrots. The lack of funding does contradict one of Justice O'Connor's recommendations. This is important. In fact the parliamentary assistant, in the last testimony, talked about a \$7-billion price tag. I'm not sure where that's coming from, but we do know that in the province of Manitoba there's the Manitoba water stewardship fund. That has been written right into the legislation. It's a separate water stewardship trust fund available for not only water management but water quality. There's no mention of that in this legislation. It is in the Manitoba legislation, as you've pointed out. Will you be putting forward a specific recommendation or amendment to this legislation to include something like that?

Mr. Bonnett: Actually, we had put forward that there would be something along the lines of a stewardship fund put in place. This stewardship fund too, I think, has to go not only for implementation, but we also have to look at the funding that's being provided for the source water protection planning. There has been significant funding granted to conservation authorities and the committees,

but the reality is that the way we see this planning process rolling out is that when you get down to the individual wellhead, there's going to have to be a large number of working groups put in place. Right now there's no mechanism to make sure that those people who are participating in those working groups are funded. This is why it's critical to have a stewardship fund put in place to pay for the implementation side. But we also have to take a look at the planning side and make sure that funding extends far enough so that we can get really good, solid advice at ground level when we break down from a watershed level to the wellhead level and determine exactly what should be done there.

The Acting Chair: Thank you. We're out of time. Thank you for presenting.

CITY OF TORONTO

The Acting Chair: Our next presentation is the city of Toronto, Shelley Carroll, councillor. I believe you're probably aware that you have 10 minutes, followed by five minutes of questions. When you start, if you would state your name into the record for Hansard, please.

Ms. Shelley Carroll: Good afternoon. My name is Shelley Carroll, city councillor and chair of the Toronto works committee, to which Toronto water services reports. I'm joined today by Bill Snodgrass, who is senior engineer at Toronto Water. I may be relying on him when we get to questions and answers.

We thank you for giving Toronto an opportunity to provide comment on the clean drinking water act. I'm here on behalf of Mayor Miller, but also on behalf of Toronto city council as a whole and of course our residents.

Toronto's only source of drinking water is Lake Ontario, and that's the crux of our position. For us the development, content and effectiveness of the Clean Water Act are crucial.

Firstly, I want to congratulate all those who worked on the Clean Water Act. As it stands today, the act represents the progress we've made towards protecting groundwater quality. It's an excellent start, but we must take the Clean Water Act further, in our view. In the presentation today, I'll outline the city's concerns with the act in its current form and make suggestions for ways to improve it.

As you know, Toronto is a large urban centre that's ever-growing. Today we provide drinking water, waste water and storm water management services to two and a half million residents inside Toronto as well as 400,000 residents in York region. We support the provincial policy statement Places to Grow and we've accommodated its population projections in the official plan.

We continue to provide safe, clean and reliable drinking water to all our residences and businesses. Like many other North American cities, we're also faced with the challenge of renewing and replacing aging infrastructure at an aggressive rate. This is key to providing high-quality drinking water and it is certainly our largest cost pressure.

Our water mains and waste water pipes placed end to end could stretch across Canada and back again, with pipes to spare. That's the sheer volume of our projects. The job of maintaining, repairing and renewing Toronto's infrastructure is a massive responsibility. The replacement value of all of these assets is estimated to be \$27 billion. But not all assets can be quantified in dollars.

Although it is our main priority to commit to infrastructure renewal, we're also very committed to protecting the lake and continuing to provide a safe drinking water source that we can rely on for generations to come. That's why the city has taken an active role in implementing some leading environmental initiatives like the sewer use bylaw, one of the first and strictest bylaws in Canada, which prevents pollutant discharges into our source waters. The wet weather flow management master plan is a 100-year plan to protect our environment and sustain healthy rivers, streams and of course the lake. The city's salt management plan is a very good example. Its goal is to minimize the amount of salt discharged to our source waters.

With these ambitious initiatives, we hope to limit the negative impacts of urbanization and ultimately preserve our lake and protect our source water. But we can't do this alone.

The Great Lakes is the water source for 75% of Ontario's population throughout 95 municipal systems. For Toronto, Lake Ontario is the only source of drinking water. As a result, a more comprehensive Clean Water Act must also seek to protect the Great Lakes surface water.

The Clean Water Act is a great piece of legislation for groundwater sources. It focuses on rural communities and the protection of groundwater. It also implements many of the Walkerton inquiry's recommendations. It recognizes that safe, high-quality drinking water sources are fundamental to public health and the environment. But the act does not protect Great Lakes source waters. For this reason, we're extremely concerned about potential threats to our drinking water source and also to our public health and the environment. Threats to Toronto's source water are illustrated on the next three slides. I'm making sure that Bill is keeping up with me, because these are the big slides.

Toronto has two source waters to be concerned about. You'll see the nearshore zone and the watersheds that discharge to the nearshore zone. You're looking at an aerial shot now, and it shows you the impacts of urbanization on the Great Lakes. The purple areas on the slide represent urban areas and the green represents the wooded areas. The city of Toronto's intake pipes are located in the nearshore zone along a very narrow band five to 10 kilometres from the shore. Physically, Toronto's critical source water zone is that nearshore zone. The dominant threats to these source waters are the pathogens from both rural and urban areas and the expanding watershed area that is covered now by urbanization. As population grows around the lake—you'll see those purple areas—the chance of additional pollution reaching the Great Lakes source water increases.

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On the next slide we show that the northern nearshore zone of Lake Ontario now stretches over 200 kilometres. There are many watersheds along it, small and large. Each watershed is empowered by the current act to develop its own source water protection plan. However, we believe we need one organized body to develop a source water protection plan for all watersheds around Lake Ontario to address the cumulative effects of the runoff.

Major pollution sources to the nearshore zone include river and stream flows, discharges from waste water treatment plants, overflow discharges from storm and combined sewers, and of course agricultural runoff. The question is, how far away from our water treatment plant intakes do these threats originate? Is it two kilometres? Is it five? Is it as much as 30, or along the whole north shore of Lake Ontario? This is our fear. Our photo shows the plume from the Humber River. You'll see that it stretches six kilometres long, much larger than the primary protection zone, notice, which is one kilometre around the treatment water plant intakes.

To limit pollutants, the city of Toronto developed a wet weather flow master plan. It was developed on a watershed basis. The plan will help us control wet weather flow from combined sewer outflows and from storm water discharges. The objectives of the plan are to improve water quality in six watersheds, improve water quality all along the waterfront, reduce flooding and stream erosion, and restore aquatic habitat. The wet weather flow master plan, which cost \$4 million to develop, could provide an excellent foundation for the development of a basin-wide source water protection plan.

Right now, we're part of a municipally led partnership called the Lake Ontario consortia. This body is working to develop a source water protection plan for mainly the western end of Lake Ontario. The objectives are highlighted in the slide above; I won't read all the way through them. In addition, Toronto also is partnered with York, Peel and Durham in a groundwater consortium which has developed some of the fundamental groundwater knowledge and tools needed for groundwater-focused source water protection plans. But the Lake Ontario consortia is a potential model for all Great Lakes. We need an expanded legislative framework to complete the potential of this partnership.

The graphic you're looking at now shows the multiple numbers of pollution sources from land-based sources that must be considered by the Lake Ontario consortia. Members of the Lake Ontario consortia now include nine municipalities, nine conservation authorities, the MOE and, of course, Environment Canada. In addition, taste and odour and algal threats originate in the lake and move towards our intakes; they're also noted here. These threats generated within Lake Ontario must be addressed by the provincial and federal government in legislative framework.

In closing, you'll see our comprehensive request:

—Engage municipalities in consultation to amend Bill 43 to address the Great Lakes source water issues;

—Lead the development of a unified and integrated basin-wide source protection strategy and actively involve the other municipalities;

—Fund the implementation and development of a plan, recognizing, as we recognize, that municipalities will be ultimately responsible for its implementation.

Institutionally, we need the basin-wide approach to be led by the Ontario MOE, but also involving municipalities, CAs and provincial and federal governments. We note that the current conservation-authorities-led source water protection boards are appropriate for largely ground-watershed-focused issues, but their scale of interest is too small for the nearshore zone of Lake Ontario. The province has allocated about \$600,000 already for phase one of the Lake Ontario consortia investigations, and our consortia have applied for another \$1.2 million for phase two to develop that source water protection plan.

We look forward to working with the province, our municipal partners and others in the development of this plan. We believe that with your leadership, municipalities can take an even more active role in source water protection through their councils for the benefit of all Ontarians. Thank you.

The Vice-Chair: Thank you very much for your presentation. We move to the question period. We'll start with Ms. Wynne.

Ms. Wynne: Thanks for being here, Shelley.

Ms. Carroll: You bet.

Ms. Wynne: Bill 43 gives the minister the ability to set up advisory committees to advise on issues surrounding Great Lakes water and to prepare reports. Now, you're asking for something that goes beyond that. Can you talk about what you think the federal government's role should be in that conversation and that facilitation?

Ms. Carroll: Simply that the scope of it is such that it should be a federal issue because we are talking about the whole Great Lakes system. When you think of Lake Ontario covering drinking water for 75% of Ontarians, then clearly the Great Lakes issue should be important to the federal government. You'll hear the broader scope from the Great Lakes and St. Lawrence Cities Initiative in the next deputation. Our experience developing the wet weather flow master plan tells us that the cost is something that should be shared. But we're looking to the MOE in Ontario to provide that leadership and use us as an example, because we're already down the road on it. The city of Toronto alone, as we ramp up that plan, is already spending in the neighbourhood of \$15 million year; we'll soon be at \$40 million a year to do the implementation. I don't think it's unreasonable to ask both of these orders of government to help us with the development of that broader plan.

Ms. Wynne: You know that the issue of funding has come up a number of times, and you talk about funding implementation. You're talking about having a longer-term discussion about what that model might look like

because that implementation money is not—we don't know what it will be at this point.

Ms. Carroll: Certainly we're in a different situation than some of the smaller municipalities. Initially, what we're looking at, what we feel is most crucial, is the development of the plan. It's going to be easier to get going on an urgent basis if we don't spend the first year working on the issue of how we are going to fund the development, because the development of the plan is costly in and of itself. But we, the major municipalities around the lake, are all rate-supported water services, so there's the possibility that that conversation could come once the plan is in hand.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: I appreciate the city of Toronto testifying. You indicate you're committed to protecting the Great Lakes. Further to funding, you identify sources of pollution, river and stream pollution; you list agricultural runoff. In today's Toronto Star there's a quote that this legislation is "a draconian piece of legislation." But the point I want to make is that this legislation will impose severe hardship on farmers across the province. If, say, a farmer on the Humber River does not make the investment to clean up his operation that affects Lake Ontario and theoretically affects the city of Toronto water, does your commitment also include a commitment to assist with funding to ensure that the pollution source that may be affecting Lake Ontario, and hence Toronto's water, is cut off?

Ms. Carroll: I think our commitment has already been demonstrated in terms of getting our own house in order. We've developed the plan with our own funds and we're already involved in implementation. Some of the implementation of protection of Lake Ontario's sources began in the early 1990s, before the wet weather flow master plan was even developed. So I think our commitment is clear. We are a rate-supported service and we do go to our residents for the funding whenever we can, and many of the funds are used in this vein. The question is, in order to develop a plan—

Mr. Barrett: The source.

Ms. Carroll: Yes. The question is, in order to develop a plan that really requires partnership, we actually welcome some of the format that's explained in the act, because it's a format in which we work, which is co-operative partnerships where municipalities and regions need to work together, simply recognizing what is a scientifically obvious fact: that we have to work together; it's one body of water serving 95 water systems.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming down, Shelley. Two questions for you: Do you have any concrete amendments to the act that you want to bring forward, and secondly, can you tell us roughly what water quality source protection costs the city of Toronto? You list a number of environmental stewardship initiatives that you have that protect the quality of the water.

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Ms. Carroll: In terms of what we're doing already, you'll know that we're already involved in the storm-

water management ponds along the lake within our own city limits, and each of those is in the range of \$7 million to \$8 million to develop, right off the bat. So we're already at a point now where we're spending about \$15 million a year, and that's simply in the early stages of starting on the wet weather flow master plan.

Over the next five years, there's money committed in the capital budget, where we're doing source water land acquisition that stretches north and beyond our own city limits. But because it's important to what ends up at Ashbridges Bay, we're committing the funds to it and working in concert with our conservation authority.

So as I say, we will very soon—I think it's two years out from now—be spending \$40 million a year out of Toronto water services' budget on this.

The Vice-Chair: Thank you, Ms. Carroll.

GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE

The Vice-Chair: Now we move to the Great Lakes and St. Lawrence Cities Initiative.

You can start whenever you are ready. You know the format; I guess you have heard it many different times: 10 minutes for presentation and five minutes for questions.

Mr. David Ullrich: Very good. Thank you very much, Mr. Chairman and members of the committee. My name is David Ullrich. I am the executive director of the Great Lakes and St. Lawrence Cities Initiative; I'll refer to it as the Cities Initiative because it's a bit of a mouthful. We have approximately 85 participating cities from the United States and Canada, with roughly an equal split between our two countries. We have three primary goals of our organization. The first is to get a seat at Great Lakes and St. Lawrence decision-making tables. Secondly, we are working diligently to advance the protection and restoration of the resource. Third, we are doing our best to promote best practices among cities who share this wonderful resource of ours.

To begin, we also focus on three primary areas where our goals are established. One is for water quality, second is for water conservation and, third, waterfront vitality. Almost all of our activities are focused in this direction.

We applaud the efforts of the Legislative Assembly to move forward with this legislation and make sure that all Ontarians have clean, fresh and safe drinking water available to them at all times. There's really nothing more fundamental to life than this resource, and events like the Walkerton incident certainly bring to our attention the vulnerability of the resource and that we cannot take it for granted. We have this tremendous resource and we must take steps to make sure that the abundant supply is kept that way.

The basic approach of Bill 43 is fundamentally sound. Having assessment reports to look at the threats and the risks and source protection plans, if done properly, should identify the risks to the water and the actions to reduce those risks to acceptable levels or eliminate them

completely. The conservation authorities are in an excellent position to work with the municipalities on a watershed basis to do these assessments and develop the plans, especially where the source drinking water is ground water. Those plans must include the types of actions that municipalities are in a position to take so that the protections can be put in place.

The bill also includes a section on Great Lakes agreements and requires consideration of those agreements in preparation of assessment reports and the plans. The connection with those agreements is good, but the Great Lakes, as a source of drinking water, need far more protection and a more comprehensive approach to assessment and protection under the bill to be effective. The Cities Initiative is concerned that Bill 43 does not provide the level of protection needed for the Great Lakes as a source of drinking water to 75% of the people of Ontario. Although consideration of existing agreements on the Great Lakes is a good place to start, there must be much more prescriptive and comprehensive requirements to meet the letter and spirit of those agreements. In addition to provisions that deal more specifically with the threats that create significant risks to the drinking water values of the Great Lakes, it's simply not possible for any group of conservation authorities and municipalities alone to address effectively the protection of a resource the magnitude of the Great Lakes. The province and the federal government must do so, with strong participation from cities and conservation authorities.

Municipal waste water discharges, especially those from combined sewer overflows and sanitary sewer overflows, are a major problem across the basin. As you've just heard from Councillor Carroll, cities have worked hard and spent major sums of money on sewers and treatment plants, but much more needs to be done to solve the problem. The province and the federal government need to make more significant investments in this area.

Stormwater runoff from urban and agricultural lands that is not captured and treated by sewer systems is also a serious problem that needs attention. Municipalities and conservation authorities have worked on this problem as well, but again, more direct investment and participation from the province and the federal government are needed.

Invasive species are a pervasive problem across all of the Great Lakes. Over 180 have been introduced already, and new ones arrive at the rate of almost one every eight months. Most of these are broader threats to the Great Lakes' ecosystems, but specific ones such as zebra mussels have caused serious problems on drinking water intakes and have been associated with taste and odour problems. In addition, there is a serious concern that pathogens could be introduced to the lakes from ship ballast water and contaminate water supplies. Much stronger action, particularly at the federal level, is needed.

Toxic pollutants have contaminated the water and the fish to the extent that advisories are in place in every

lake, limiting the consumption of many species of fish. Mercury and PCBs are some of the major problems, but the presence of other toxic contaminants, plus such things as pharmaceuticals, are real threats that must be addressed.

On a more general level, the precautionary principle is an important concept that needs to guide all of the efforts under the Clean Water Act. The principle needs to be incorporated at the operational level as well.

Ontario is uniquely situated as the Great Lakes province of Canada to provide strong leadership in protecting the resource through this bill, and also in the context of renegotiation of the Canada-Ontario agreement on the Great Lakes and the review and possible revision of the Great Lakes Water Quality Agreement. The cities stand ready to work closely with the province and the federal government on all these important efforts.

The Great Lakes and St. Lawrence Cities Initiative appreciates this opportunity to provide you with our comments, and we look forward to working with you in the future. I would be happy to answer any questions that you might have.

The Vice-Chair: Thank you very much for your presentation. Now we move on to a question period with Ms. Scott.

Ms. Scott: Thank you for appearing here before us today. It has worked well that you followed the city of Toronto, because you were sending out similar messages, and with the Great Lakes being such a draw on our drinking water. My colleague from Haldimand-Norfolk-Brant mentioned communities, municipalities upstream that also feed into them, and you mentioned that we need tools in place to all work together.

What do you think the province's responsibility is to establish a fair funding compensation, or a partnership with municipalities or with the federal government, which you mentioned? Is there an example out there that you might have seen before that you can use?

Mr. Ullrich: I don't have any specific examples in mind right now, but it does seem that with the resource, the magnitude of the Great Lakes, even looking at Lake Ontario specifically, when it is shared by two countries, many state or provincial jurisdictions and then many municipalities as well as First Nations, it does require a collective investment effort at all levels of government to really tackle a problem of this magnitude.

The US has provided substantial funding, for example, for combined sewer overflow and waste water treatment really extensively since 1972. Canada and the provinces have provided some as well. But it seems that to really get at the problem of protecting this water, most importantly as a source of drinking water, it is going to take more in the future.

As to a specific approach, I really don't have any particular one in mind.

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Ms. Scott: But you advocate a strong provincial role.

Mr. Ullrich: Yes, and I think Ontario, with boundaries on all of the Great Lakes, is in a unique position to do this.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming here and making a presentation today. In your presentation, you note that consideration of existing agreements around the Great Lakes is a good place to start; there must be much more prescriptive and comprehensive requirements. Do you have exact wording, exact sections of the act that you believe need to be changed?

Mr. Ullrich: No, we have not developed that. But it might be a good place to start as opposed to just considering these requirements, to comply with the requirements of these agreements. There would obviously need to be much more wordsmithing to come up with everything right.

Mr. Tabuns: Yes, exactly.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thank you, David, for coming in. We really appreciated it, and it is timely after hearing from the city of Toronto. How does the Clean Water Act, this piece of legislation, stack up compared to other jurisdictions to the south of us? I've seen some comparison of where we are with other provinces, and it seems to be groundbreaking. Is this groundbreaking also in the Great Lakes basin? If so, is this something you would promote, that other jurisdictions that we're sharing this source of water with also move in step with what we're doing here in Ontario?

Mr. Ullrich: I have some familiarity on the US side with source water protection efforts, primarily under the Safe Drinking Water Act on the US side, a federal provision. Most of this is in the planning of various source water protection approaches. I haven't had an opportunity, really, to do a side-by-side comparison. But my guess is, as with many environmentally related provisions, we usually have much to learn from one another. Particularly because of the Walkerton incident, which precipitated the action here in Canada, my guess is that there are probably some real groundbreaking approaches here. So I think there are some things that could be learned from the source water protection efforts on the US side, but likewise the US could learn from here.

Mr. Wilkinson: It's my understanding that everything on the other side of the border in other jurisdictions is voluntary, everything: "This is what you should be doing, but it's up to you." I think you're right: Given the context here in Ontario, we're taking that next step by saying, "No, this is something that has to be done; we have to work together locally to make it happen"—

Mr. Ullrich: Definitely.

Mr. Wilkinson:—"but the goal of having it happen is something that's actually in legislation. It may be something that we can, through your good offices, work on with the other jurisdictions that we're sharing our drinking water with and try to move that standard up throughout the whole basin. I think that would be helpful.

Mr. Ullrich: We'd be happy to do that.

The Vice-Chair: Thank you very much for your presentation.

Mr. Ullrich: I did want to point out quickly that Mayor Miller is the chairman of our organization this year. Mayor Daley is our founding chairman, but Mayor Miller is providing excellent leadership for us.

The Vice-Chair: Thank you very much for the clarification.

ONTARIO CHAMBER OF COMMERCE

The Vice-Chair: Now we'll move to the Ontario Chamber of Commerce.

Mr. Crispino: First, welcome. You know the procedure, I believe: 10 minutes for a presentation and five minutes for questions. You can start whenever you're ready.

Mr. Len Crispino: Yes. Thank you very much, Mr. Chairman. Good afternoon. I'm Len Crispino. I'm president and CEO of the Ontario Chamber of Commerce. With me are Stuart Johnston, our vice-president of policy and government relations, as well as Mary Hogarth, senior policy analyst.

We thank you for the opportunity to provide the Ontario Chamber of Commerce's perspective and suggestions with respect to Bill 43, an important and worthy piece of legislation. I've provided the clerk with our submission and we'll be happy to keep our remarks as brief as we can.

For those of you who may not know, the Ontario Chamber of Commerce membership consists of 160 local chambers of commerce and boards of trade across the province, representing some 57,000 companies of every size and from every sector. Our membership resides in the very communities that Bill 43 will directly affect and, therefore, it is an issue of great importance and concern to our membership.

As I stated earlier, the Clean Water Act is an important and worthy piece of legislation. Protecting our water must and should be a priority of this and every government. Both our rural and urban business owners throughout the province care about the quality of life in their respective communities, including the safe and reliable supply of water.

As such, the OCC is fully supportive of Bill 43's stated intentions and goals, broadly speaking. However, we also recognize that the road ahead, while paved with good intentions, can sometimes be laced with the occasional pothole. This is potentially the case with the Clean Water Act in its current form. Therefore, we would like to offer to you what our members believe should be considered before the bill comes into law.

There is, in our opinion, much ambiguity with respect to Bill 43, particularly as it relates to three main areas of our submission: costs related to the public and private sectors; accountability and responsibility; and definitions of language. The OCC recommends that, either through the bill or regulation, such ambiguity be eliminated and replaced with the clarity of language that legislation of this importance requires. Let me explore the issue of costs for a moment.

Bill 43 imposes an obligation towards landowners, business owners and farmers that could potentially affect how they use their land and conduct their business. Existing businesses and agricultural producers that are working under today's standards of due diligence may find that their current activities will not meet the potentially new, higher standards set out in Bill 43. The OCC and its members believe that today's land users should not bear the sole financial burden of reaching this new benchmark when it is in the interests of all Ontarians to have safe drinking water. Land users need to be assured that they will not have to compensate for the cost of alterations made to the land use beyond normal due diligence.

This same recommendation was made in January of this year by the Water Well Sustainability in Ontario report. In this expert panel report, it was stated that, "Land users need to be assured that any alteration in land use beyond" normal "due diligence will be compensated as the alterations are done in the interest of the public good."

Indeed, the agricultural community in particular is vulnerable to cost increases. Bill 43 threatens to create an additional cost burden for some farmers at a time when they can least afford it. In fact, farmers practising under today's standard of due diligence should not be penalized for a change in best practices that is for the benefit of all Ontarians. Fair and equitable compensation must be established in order to ensure that our agricultural producers can continue to feed the province.

The same issues can be applied to our municipalities. The Clean Water Act assigns new responsibilities to municipalities without a similar allocation of funding for the implementation, administration and enforcement of such responsibilities. At a time when energy rates and property tax rates are skyrocketing, taxpayers and local businesses can ill afford yet another local tax burden. While the potential costs of such measures contained in Bill 43 are at this point unknown, the Association of Municipalities of Ontario fears that they could indeed be very substantive.

We recognize that the government has already committed a reasonable sum to finance technical studies and other costs relating to the drafting of source water protection plans, but source water protection is and should be a provincial responsibility. So, as a recommendation, the OCC suggests that Bill 43 be amended to explicitly include a fair and reasonable cost-sharing and/or compensation system. This will serve to assist all land users, including municipalities, to overcome the potential financial burden of meeting the requirements of new water standards.

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Let me now turn to the issue of accountability and responsibility. Section 7 of the legislation refers to a source protection committee. The legislation is vague on how exactly the source protection committee members are chosen or by whom. Given the importance of the work the source protection committee will oversee, it is

important to ensure that it has equal representation from all affected parties.

We therefore recommend that prescriptive and explicit language be included in the bill, outlining the composition of the source protection committee. In addition, the government must ensure there is local representation from all sectors, such as municipal, industry and consumer.

The legislation also grants the source protection committee the task of preparing a drinking water source protection plan under the appropriate lead of local conservation authorities. Unfortunately, it is unclear as to how these plans will be drafted in a consistent and reasonable manner throughout the 400 affected municipalities across Ontario. This could potentially create patchwork plans across the province, a situation that in our opinion should be avoided.

We recommend that the government explicitly mandate that clear and concise, science-based criteria be used as the basis for the operation and plans of the source protection committee. This, in our opinion, will ensure that a fair and consistent planning method is used throughout the province.

Our final point today involves the ambiguous nature of the terms and definitions contained in the Clean Water Act. We have concerns that some of the language used in Bill 43 is broad and subjective in nature. Specifically, the legislation provides definitions for “drinking water threats” and “significant drinking water threats.” Unfortunately, it is our opinion that such definitions are too broad, to the point that our members fear that almost anything could be interpreted as a threat under these definitions. We believe that such ambiguity should be avoided, not only to ensure a consistent application of standards across Ontario, but to ensure that real, specifically defined threats are both prevented and removed from our water sources.

It is our recommendation, therefore, that the government revisit the definitions in order to set specific measurable standards and criteria for “drinking water threats” and “significant drinking water threats.”

On a related matter, Bill 43 does not recognize an appeal process for the landowner from decisions made by a source protection authority or permit officials. With broad, subjective definitions being used to measure threats such as “drinking water threats,” it is only fair that the landowner be able to appeal a decision if he or she thinks it is unjust.

The legislation also gives the MOE the authority to override all current land use planning statutes. We are concerned that the bill does not allow for statutory appeal from this overriding decision-making power by the MOE.

It is our recommendation that an appeal mechanism be established in order to provide a fair and just system.

In conclusion, the Ontario Chamber of Commerce strongly supports initiatives aimed at source water protection and broadly supports the Clean Water Act in principle. If you adopt the suggestions we have made

today, we believe the proposed legislation will be stronger and will truly ensure that our valued water resources are indeed protected. Thank you for your time.

The Vice-Chair: Thank you, Mr. Crispino. We'll start with Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today; such a good presentation. I know that my local Kawartha Lakes chamber of commerce and Amy Terrill did a great presentation to us on the Clean Water Act.

You mentioned a lot of good points. What I want to ask about has a lot to do with costing. Do you think that when the municipalities are going to have to pay for this—it's going to be downloaded from the province. What type of actions will you see, what businesses may go out of business, taxes go up? Can you give us an idea of the impact if this legislation goes through the way it is, the effect on municipalities and businesses?

Mr. Crispino: I'll pass it over to Stuart Johnston because I know he's done a fair amount of work in this area, and then I'd be happy to elaborate further.

Mr. Stuart Johnston: Thank you for the question. In terms of the specific dollars, the specific impact and magnitude of the impact, it could very well vary across the province, because we don't know how these plans are going to unfold and the specific impacts. We all know—I think it's a given in this room—that the property tax system is overburdened. Last week's announcement by the Premier with the MOU to investigate the service costs and delivery of local systems—they're working with AMO on that—just demonstrates that there's too much burden on the property tax.

Going specifically to Bill 43 and the impact on the municipalities, it's not unreasonable to envision a significant cost placed on the municipalities to upgrade their infrastructure, to add new technologies—whatever the plan calls for. That in fact is an inherent cost, a significant cost that we don't think could be borne specifically by that local region and those local taxpayers. They're already overburdened enough. So it is our opinion that since source water protection is indeed a provincial responsibility, a pool of money should be available for municipalities to tap into on an as-needed basis, given stringent criteria and whatnot. We also believe that the private sector should be able to tap into such funding as well, because we don't want to put them out of business, but we want to help create a safer water source. It is our opinion that their funds should be available from the province and not the local area.

Mr. Tabuns: Thank you for coming today and making this presentation. You raised this whole question of lack of clarity with definitions, and that's a concern, I think, around this table; maybe not completely around the table but part of the table, anyway.

Interjections.

Mr. Tabuns: Okay, so I can't speak for the government.

Have you spent time thinking about what reasonable definitions would be for a significant water threat?

Mr. Crispino: To be quite honest, no, we haven't looked at the operational definitions, how you would define it. But from our standpoint, as we look at the legislation and the number of different ways in which some of the pieces can be interpreted—farmers in particular bear the brunt of so many issues in our economy and are going through some major difficulties. We believe that this adds just another level of uncertainty. It's not only the real uncertainty but it's also the perceived uncertainty in terms of what may happen tomorrow. It's very difficult for them to plan ahead, because the definitions are simply unclear.

The Vice-Chair: The parliamentary assistant?

Mr. Wilkinson: Thank you for coming in. I'm sorry that I won't be in Stratford tomorrow for the small business agency in my riding, but we'll be in Walkerton on the committee. Again, thank you for your comments about being more specific in regard to definitions. We're hearing that from some other people, so we appreciate the fact that that will be on the minister's radar.

You were concerned about 400 different affected municipalities trying to figure this out and about lack of coordination. I can just share with you that there will be about 19 regional planning authorities, which is an amalgamation of some conservation authorities. All of these things—terms of reference, assessment reports, source water planning report—have to be approved by the minister. It will be the minister's responsibility and her undertaking that there will be the kind of coordination and clarity that obviously business would seek.

Just to be clear, in all of the process, people have the right to go to the Environmental Review Tribunal, which is a quasi-judicial body that deals with this. That is available under the law, and that isn't being circumvented.

Just to the question of costs, as a certified financial planner and a member of your association, you're saying that basically this should not be on the individual and it should not be on the property taxpayer, so therefore it should be uploaded to the province. Are you saying that beyond the fact that we've already budgeted money for all of this science—and obviously that has money budgeted for, going into the future—that provincial income taxes should go up to cover this? Not the people who are actually drawing the water but all 12.5 million people, those provincial taxpayers, should be paying more so that some people have this compensated, or should it be user pay? I'm just wondering where you land on that.

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Mr. Crispino: We're never in favour of increased taxes.

Mr. Wilkinson: I know, but since we both know money, it's going to come from somewhere. So your submission is where it should come from and—

The Vice-Chair: Thank you, Mr. Crispino, for your presentation.

Before we start the next presenter, Ms. Scott has a request. Go ahead, Ms. Scott.

Ms. Scott: Since we're talking about clarification of definitions, I just wanted to know if I could request of the researcher—this morning, the minister in her comments referenced the "precautionary principle." I wondered if the researcher could find out for the committee what the minister meant by that term.

Mr. Wilkinson: There was a lack of clarity there?

Ms. Scott: It seems to be a theme through the whole bill.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Vice-Chair: Now we go to the Canadian Institute for Environmental Law and Policy.

You can start when you're ready.

Ms. Anne Mitchell: Thank you very much, Mr. Vice-Chair and committee members, for letting me come here today. My name is Anne Mitchell. I'm executive director of what's called the Canadian Institute for Environmental Law and Policy, also known as CIELAP. CIELAP is an independent think tank which has been providing advice to Ontario governments for over 35 years. You have copies of our submission. There are some specific recommendations in it, even with wording that could be put into the act to amend it.

Clean water is vital to life. You don't miss clean water until you don't have it, and I'm sure the citizens from Walkerton, from other communities, from many of our First Nations communities will attest to that, and I will too after working for two years in a rural community in Africa with no clean drinking water: You appreciate it, but only when it's gone.

The Clean Water Act, 2005, is a good act. It's an essential piece of legislation. Our submission actually addresses three areas of concern, and we think that if the Ontario Legislature, the government, can address these three areas of concern, it would be an even better act. Our first area, or one of our areas, is, who will pay? Where is the money going to come from? That is a big question, and it is something that has to be resolved soon. Our second concern is getting local community buy-in so that you're not always going to have these demonstrations outside, but that the community will be in and involved. The third area of concern is, when in doubt, being careful, or adopting the precautionary principle.

I'm going to start with being careful. If we are uncertain, then we should be using caution and the precautionary principle. There is no reference to the precautionary principle anywhere in the drinking water act. We think it should be in the statement of principles in the preamble and also as part of the implementation. There should be a reference to "precaution" somewhere in the Clean Water Act.

Our second concern is involving local communities. Source water protection won't work without the involvement of local communities in the planning and the implementation. Their involvement will lead to a better outcome, so somehow or other there has to be local com-

munity, multi-stakeholder representation on these committees, and their participation needs to be paid for. Local community and environmental non-government organizations don't have, in most cases, the core funding to engage in these issues.

But probably the most important issue that needs to be addressed is, who is going to pay and how are we going to get the funding for this act? Clean water does not come cheap. Users have to pay and, in a way, the more you use, the more you have to pay. Full-cost pricing mechanisms could be—we've a number of a suggestions, or there are a number of mechanisms that could be used. You probably heard some from the Canadian Environmental Law Association this morning. I'm just going to mention three, and there are more details on these mechanisms in our submission.

Full-cost pricing—that's the first one: So, in fact, having water rates where we're paying the real cost of getting the water to us and the sewage and all the rest of it.

Levies for taking water for commercial use: If industry, if business, is drawing water from the Great Lakes for commercial use, there should be levies on this.

The third mechanisms that we looked at was levies on fertilizer and pesticide use.

The Clean Water Act is essential. Clean water is vital to life, and having access to clean water isn't cheap. So the Clean Water Act, in our view, would be a better act if there was clarity about the funding mechanisms and who will pay, if local communities were involved from the beginning in planning and implementation, and when we're in doubt about threats to our water, we are cautious. Thank you.

The Vice-Chair: Thank you for your presentation. We have a lot of time for questions.

Ms. Mitchell: I didn't think you'd want me to read the presentation, which you've got. I would rather hear from you.

The Vice-Chair: No problem. We'll start with Mr. Tabuns first.

Mr. Tabuns: Thanks for coming in, Anne. Great to hear from you.

Ms. Mitchell: A pleasure.

Mr. Tabuns: In terms of funding and cost, do you have a sense of the kinds of costs we're talking about?

Ms. Mitchell: We haven't done that kind of work. We'd be happy to do that kind of work, but we haven't.

Mr. Tabuns: Okay.

Ms. Mitchell: Obviously, it's not going to be cheap and we've got to look at different mechanisms to fund it.

Mr. Tabuns: Just to make my colleagues over there happy, I'm also going to ask you—there are a number of definitions that are missing in this act—have you considered those definitions? Would you be in a position to bring forward legal definitions that we could put forward as amendments?

Ms. Mitchell: We could. They're not in our submission, but we certainly could do that.

Mr. Tabuns: In terms of what you've brought forward, what do you see as the most crucial change or amendment that is needed with this bill?

Ms. Mitchell: We have three, specifically. One is incorporating precaution and the other one is suggested amendments to allow for more public participation, and we've got specific amendments in our submission related to that.

The Vice-Chair: Parliamentary assistant?

Mr. Wilkinson: Welcome, Anne. You are a legend, and it's wonderful to have you here.

Ms. Mitchell: Thank you.

Mr. Wilkinson: We appreciate the work that you and your organization have been providing with our ministry over the last few years as we've worked together on this.

Ms. Mitchell: It's 35 years.

Mr. Wilkinson: We haven't had this one for 35 years.

Ms. Mitchell: No, we haven't had this one for 35 years.

Mr. Wilkinson: That's right. Let's get into that question of public participation. We and the minister have stated clearly about how this will be in regulation and you're asking us to put that in the legislation, and we appreciate that.

On the question of cost, we just had the Ontario Chamber of Commerce here and they were saying, "Don't put it on the property taxpayer, don't put it on the water user, don't put it on the individual. Put it on the province. They'll magically come up with the money. Don't raise taxes to do it." You're taking the policy position that what's important is user pay because that generally encourages the right environmental response from people in regard to the economics of it, doing the right thing.

Our position has been that after we do all of the science, get all the work done, obviously there can be cases of hardship and then we'll look at that; we just can't define it yet. Would you agree with me in the sense that, one, it should be user pay, but there could be some metric that would say there's a cost that is unsustainable by the user but for the public good the province needs to then delineate that as hardship because of the inability of the user to pay for it reasonably? One then has to look to the province, perhaps in conjunction with the federal government, to provide funding so that we have equity protecting our water.

Ms. Mitchell: There will have to be some reallocation to produce some kind of equitable costing, obviously. That could be done in a number of ways, whether it's incentives for conservation or whether it's reduced costs for some water uses, if these are in fact in the public good, reduced costs for some amount of water for individuals so that we all can, in fact, afford some water. If you are in your big monster home and you are watering your garden and you are filling up your pool and you are washing your four cars, then pay for it. So it's that kind of incremental.

I think, too, there should be costs for commercial use but, yes, we would have to look at if we are in a society

that does want to protect the most vulnerable of our citizens, and we have to do something for that. There may be uses as well. Agricultural uses: We've heard about that. There may be specific fire protection. Obviously, we're going to have to figure out ways of making sure that water is available for some of these essential services.

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Ms. Scott: Thank you very much for appearing here before us today. We've talked a lot about costing, and we need provincial participation, no question, representing a rural riding. The infrastructure alone that the municipalities are going to have to look at to service some of their small communities—and I have communities that have price tags of \$35,000 a house to put a water system in at present. So it can grow from there, just to put a little bit of a rural perspective on it.

We talked about a stewardship fund that the Manitoba government put right in their legislation. Are you concerned that there isn't a water stewardship fund within the legislation, as it exists now, to assist municipalities, landowners, farmers etc.?

Ms. Mitchell: I think the issue of where the money is going to come from needs some careful thought. I think all levels of government have a responsibility, including the federal government. I noticed that in the US and EPA, there is, in fact, a drinking water state revolving fund, where the federal government was providing funding to state municipalities to implement some of the things that they have to do.

I think there are some jurisdictions in Canada and in other parts of the world that have done things like full costing of municipal water. There are several OECD countries that have adopted a full-cost pricing system. In fact, Ontario has embarked on this path with the Sustainable Water and Sewage Systems Act. But regulations haven't been made, so it has not come into force.

There has also been some talk within the ministry. It was announced in December 2003 that it intends to apply charges to water-takings. Again, several jurisdictions have, in fact, done this. BC, Saskatchewan, Manitoba and Nova Scotia have implemented a charge for water-taking, and so has Minnesota and the United Kingdom. There are exemptions—and these will have to be discussed—like, as I said, fire protection, agriculture and wildlife habitat.

The fertilizer and pesticide levies which we are suggesting: I wondered if that would be controversial. But again, Wisconsin, Iowa, Minnesota and Oregon have, in fact, assessed surcharges on fertilizer and pesticide sales and charged producers or distributors directly. So there are some states. California, Minnesota and Iowa have adopted nominal pesticide taxes. Kansas has a fertilizer registration fee program. So there are a number of precedents out there in other jurisdictions, and I really think the sooner the province starts figuring this out, the better. You're revolving your stewardship funds. There will need to be something.

The Vice-Chair: Thank you, Ms. Mitchell, for your presentation. Thank you, Ms. Scott, for the question.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Vice-Chair: Now we call on the Association of Municipalities of Ontario.

Mr. Doug Reycraft: Good afternoon. My name is Doug Reycraft. I am mayor of the municipality of Southwest Middlesex, a Middlesex county councillor and, as of five days ago, president of the Association of Municipalities of Ontario.

The Vice-Chair: Congratulations.

Mr. Reycraft: With me this afternoon is our policy director, Brian Rosborough.

I'm pleased to be here this afternoon to discuss Bill 43 with you. AMO has been involved in this issue right from the outset: at the hearings in Walkerton and as an active party on both the advisory and implementation committees. We have provided municipal perspectives and positions to all the government releases, from the white paper to the proposed legislation. Our message has been consistent and clear, but we have not been heard on three fundamental issues, which I will get into in a moment.

Before I get to those issues, let me just say that we do believe that the government has genuinely good intentions to protect sources of water, and the municipal governments in this province share those interests. Municipalities, though, have fundamental concerns around the current structure of the proposed legislation. There is a lack of decision-making at the front end of the process and at the development stage of the source water plans. However, subsequent to plan development and approval, they face increased costs and exposure to liability in plan implementation. The legislation fails to address funding for a mandate that goes on in perpetuity.

AMO has reiterated its concerns with the issue of roles and responsibilities from the beginning. Unfortunately, we have not been heard. AMO continues to have substantive issues with the lack of a municipal role in the areas of source water policy development. At the other end of the spectrum, in the area of implementation, municipalities will be given a substantive, but apparently unfunded, mandate.

In respect to municipal decision-making, municipalities do not have a leading role in the development of any of the work leading to the development of the source water protection plans or the decisions on the plans. The responsibility of preparing the terms of reference, assessment reports and the development of the source water protection plans falls to the source water protection authorities, conservation authorities or the source water protection committees. Not only is there a lack of a direct decision-making role for municipalities, there is also very limited representation for any one municipality on either of the two leading source water groups: the source protection committee and the source protection authority.

More importantly, municipalities will not have the responsibility of making any decisions within the boundary of their municipality affected by the work being done for the plan, the scope of work, the science or the

policy. We agree that it's the minister's responsibility to approve the source water plans, but we also believe that municipalities, as elected bodies of government, should have the opportunity to make decisions, not just comment on plans earlier in the process. Municipalities should, at a minimum, have the ability to set a minimum area of protection of what happens to our wellheads or intake areas. AMO is suggesting text changes to the proposed legislation, which we will submit to you in the near future.

The second area of concern, one which has been repeatedly voiced, is that of liability. Municipalities have a limited role in the development, and no role in the approval, of source water plans, but they face high costs, including a high level of liability, in fulfilling their implementation responsibilities. To move forward, municipalities need liability protection under part IV of the proposed act or the liability consequences for municipalities will be unmanageable.

It is imperative that the province retain the permitting official function unless an individual municipality requests those powers. Some of the larger municipalities may request this role and should be delegated those responsibilities when it's requested, but the majority of municipalities in the province will likely not be in that position for a long, long time.

Further, the bill should set out that risk assessments are to be undertaken by qualified professionals, not municipal staff. Most municipalities do not have these resources and should not be forced to take on the resulting liability.

Finally, the bill should be amended to state that section 19 of the Ontario Safe Drinking Water Act does not apply to matters covered under Bill 43 to further protect municipalities, their officers and officials from inadvertent liability exposure.

The third area of municipal concern is cost. While municipalities have no apparent role in decision-making at the front end of the process, as I've said, they are required to take on new and substantive responsibilities of implementation. These new responsibilities will be costly and ongoing. The resource implications of the implementation requirements have not been assessed. While the Ministry of the Environment has been forthcoming in providing funds for the preparation of the technical reports and the source water plans—some \$67 million, I think—there has been no apparent commitment to implementation costs.

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AMO has stressed to the ministry on many occasions our concern that the lack of funding for implementation would constitute a very large unfunded mandate. We have requested the establishment of a sustainable, long-term funding program for implementation, and that continues to be a major issue.

For starters, official plans and zoning bylaws must be updated to conform to source water plans. The policy development and defence in the OPs and zoning bylaws appear to be the sole responsibility of the municipality.

For those familiar with the planning process under the Planning Act, it will come as no surprise that development of policy, any policy, requires extensive consultation, deliberation, staff resources and frequently arbitration before the Ontario Municipal Board. Beyond the document update, municipalities may have impacts on their municipal services and may be required to upgrade their infrastructure, including, but not limited to, water and waste water treatment plants, which can have a very significant cost.

The most significant new direction relative to implementation is in the mandatory requirement to regulate activities and land uses. Part of this new mandate is the requirement to establish permit officials and inspectors with the power to regulate activities. The actual extent of the permitting responsibilities will not be known until the regulations are in place. However, it is quite clear that these positions will carry a great deal of responsibility. Our first concern is with a municipality's ability to resource the position of the permitting official and those of the inspectors. Our second concern is in respect to the cost, which will be ongoing and substantive.

No one has been able to provide any credible estimate of the cost of implementing the legislation. The ministry has stated that in Oxford county similar activities, including land acquisition and wellhead protection, cost only \$1.62 per household, per month over a 10-year period. That may not sound like a lot of money, but it's over \$5 million in the case of Oxford county. What would that mean if extended province-wide? There are 4.5 million households in Ontario. Based on the ministry's figure of \$1.62 per household, per month, that's about \$875 million in additional costs for municipalities over 10 years, or \$87 million a year.

That's not an AMO estimate. We're not suggesting that this is even an accurate estimate. It may be high or low; it's impossible at this point to be sure. But that is what \$1.62 per month, per household would mean province-wide. Frankly, it's impossible for us to estimate what this might cost and that's very troubling for municipalities and property taxpayers.

AMO is requesting that the proposed bill be amended to ensure that there be no appeal of official plan amendments and zoning bylaws which are undertaken to conform to source water plans. Further, AMO is requesting that a stable source of provincial funding be provided to municipalities to cover the cost of the conformity initiatives and impacts on municipal services such as upgrades to water and waste water treatment plants. Should the bill not be amended as suggested in respect to the provincial retention of the permitting official and inspector functions, then a stable source of provincial funding must be secured to cover the cost of this function and the associated costs relative to liability protection.

Thank you, Mr. Chairman.

The Vice-Chair: Thank you, Mr. President. Now we go to the parliamentary assistant for questions.

Mr. Wilkinson: Welcome, Doug, and on behalf of all of us, congratulations on your recent electoral victory.

Not all of us are acclaimed in this business, so congratulations.

Mr. Reycraft: It was nice.

Mr. Wilkinson: That's a testament to what you've been doing for the municipalities of Ontario.

Just to clarify on the question of liability: My understanding is, consistent with other legislation, that the bill would employ the good-faith principle, protecting municipal staff or their delegated authority, which they may have under this bill if it's passed, during the execution of their duties under part IV of the legislation. The bill would also relieve municipalities or their officials from liability associated with decisions by a permit official to issue or not issue a risk management order following the approval of an assessment report under the bill, and Bill 43 does not require that identified threats to drinking water be reduced to zero risk. It requires that every significant threat ceases to be significant, which is different than bringing it to zero. Can you give us some more clarity on that question, that you're afraid of that liability? In our opinion, we don't see that concern, but obviously you do, so greater clarity would help us on that.

Mr. Reycraft: I appreciate the fact that the sections you quoted are in the draft legislation. I'm head of a municipality that just experienced an 84% increase in our insurance premium this year, an additional \$95,000 in a municipality where 1% on the tax rate raises about \$17,000. That was a result of litigation that was brought against the municipality for something that I believe is unjustified. I feel that the municipality was fulfilling its obligations with respect to road maintenance at the time; however, that didn't prevent the litigation. That's our concern around this piece of legislation: Despite the assurances that you've attempted to provide for us in the legislation, there inevitably will be litigation as a result of it.

I also commented on section 19 of the Safe Drinking Water Act. It does make officials and directors of a municipality—of the owner of a drinking water system, I guess—personally responsible when there are inappropriate actions. I mentioned in the presentation that we would like to see an exemption to ensure that we aren't drawn into that same kind of liability in the Safe Drinking Water Act.

Mr. Wilkinson: Even for those not acting in good faith?

The Vice-Chair: Thank you, Mr. Wilkinson. Ms. Scott.

Ms. Scott: Thank you very much for your presentation today. It reflects what I hear, from my municipalities and municipalities across Ontario, that there's a downloading of legal and financial responsibility in regard to the Clean Water Act by the McGuinty government. Do you think that some municipalities are going to face financial hardship and could probably go bankrupt if the Clean Water Act is implemented the way it stands now?

Mr. Reycraft: As I said in the presentation, I think it's impossible to estimate what the costs of imple-

mentation are going to be at this point. We will need to see the regulations and fully understand those before we can even begin to draft what might be accurate estimates of costs.

Ms. Scott: We heard from the Ontario Chamber of Commerce that taxes could go up. Municipalities just can't afford the costs that are going to go with this.

Mr. Reycraft: If I could just comment on that, I think the issue of who pays for this is one that we're having trouble dealing with. Not all residents of all municipalities are customers of drinking water systems, so it doesn't seem logical to me to assume that we can follow the user-pay principle that someone here earlier this afternoon talked about in applying the cost to customers of drinking water systems. That leaves property taxes as the only other source of revenue we have, so it has to have a negative impact on those.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation today, and congratulations.

Mr. Reycraft: Thank you.

Mr. Tabuns: How do you believe your members would respond to being given the power to set water-taking charges, or to the idea of increasing the cost of water supplied by the municipality as a way of dealing with these costs?

Mr. Reycraft: I'm hesitating because there is not a common template for the acquisition of raw water across the province, nor for the way in which it's treated and distributed to customers in municipalities. Generally, it would add to the cost of water; that's something that we wouldn't look on favourably. I guess at this point that's not something we would encourage.

Mr. Tabuns: Do you think we should be spending more money on protecting water?

Mr. Reycraft: I think that the recommendations in Justice O'Connor's report are sound and they needed to be acted on. We agree with the principle behind this legislation, that the sources of drinking water must be better protected.

The Vice-Chair: Thank you very much for your presentation.

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ONTARIO STONE, SAND & GRAVEL ASSOCIATION

The Vice-Chair: For technical reasons, we'll allow the Ontario Stone, Sand & Gravel Association to do their presentation before the Friends of the Rouge Watershed.

You know the procedure: 10 minutes for the presentation and five minutes for questions. You can start when you are ready.

Ms. Carol Hochu: Thank you very much. Good afternoon, ladies and gentlemen. My name is Carol Hochu, and I am president of the Ontario Stone, Sand & Gravel Association. You may be more familiar with our previous name, which was the Aggregate Producers' Association of Ontario. Joining me today is Greg Sweetnam of James

Dick Construction and chairman of the board of directors of the OSSGA, along with Stephen Hollingshead of Gartner Lee Ltd., a hydrogeologist and special adviser to the OSSGA board on water matters.

We thank you for the opportunity to speak to you today on this important matter of public interest. Our association has been pleased to sit at the table during the development of this legislation, both on the advisory committee and the implementation committee. We appreciate the province's recognition of our industry's leading role in water stewardship.

Together we would like to share with you a number of key points regarding Bill 43 and answer any questions you may have.

Let me start by saying that our association supports the purpose of this bill to provide clean drinking water for the citizens of the province. In fact, we believe that the operation and rehabilitation of pits and quarries in Ontario is compatible with and in many ways complementary to the protection of drinking water sources.

Our industry makes a vital contribution to Ontario. Everyone in this room and indeed in the province is a user of aggregate. Whether it's the road that you travelled on today, the school that your children or grandchildren attend, the hospital that cares for your ailing family members or your local drinking water treatment plant and distribution pipes, all of these sectors, and more, depend on a vital supply of close-to-market aggregate. Unfortunately, these supplies are now diminishing. Therefore, Bill 43 must be implemented in a way that protects the safety of drinking water but does not unintentionally or unnecessarily reduce or restrict access to valuable and finite aggregate resources.

Aggregates and water are both essential rural resources to the citizens of Ontario; the province must manage both wisely. Planning decisions must seek balance. If the authority to prepare and implement source water protection plans must be given to local agencies, then it is imperative that the government set clear scientific regulations and guidelines to ensure fairness and consistency. We agree with Justice O'Connor that the province must retain ultimate responsibility for protecting water resources.

We understand that communities resist change. Whether it is a new pit or quarry, a wind farm or intensified residential uses, concerns are sometimes raised, and often those concerns relate to perceptions about water. However, decisions as important and fundamental as drinking water protection should be based on scientific facts, not on perceptions or biases that may be unrelated to the science.

Mr. Stephen Hollingshead: Aggregate resources occur by virtue of geology and are not distributed evenly across the province. By their nature, they also coincide with many areas that are groundwater aquifers and recharge areas. This should not be viewed as a problem, however, since aggregate extraction is entirely compatible with source water protection.

Aggregate producers are good stewards of the province's water resources. Of the thousands of pits and

quarries in Ontario's history, we are not aware of any that have ever depleted or contaminated a public water supply.

There are many examples of municipal waterworks and wells in or adjacent to pits and quarries in Ontario without any history of significant problems. For example, a 30-year history in the town of Caledon, with a major regional water supply sandwiched between two large operations, is touted as the highest-quality drinking water in Peel region. This well is currently undergoing an expansion by the region.

Aggregate extraction is not a threat to deplete or contaminate drinking water supplies. Although the industry handles large volumes of water in some of its operations, virtually all of that clean water is recycled or returned directly to the local watershed. The industry does not consume water.

Aggregate extraction is also a clean industry, as proven by the government's own extensive MISA studies. Aggregate is produced mechanically by crushing, screening and washing; no chemicals are added to the products or to the water. Fuels and lubricants for the machinery are the only chemicals used or stored at most pits, under very strict provincial regulations. Pits and quarries are not sources of bacterial contaminants, such as the type that caused the Walkerton tragedy.

Mr. Greg Sweetnam: One of our major concerns with Bill 43 is the prospect of unnecessarily duplicating existing provincial regulations. We are already highly regulated by the province when it comes to protecting water resources.

Aggregate producers cannot obtain a licence for below-water extraction under the Aggregate Resources Act until professionals carry out a comprehensive assessment of water resources. Drinking water supplies are addressed. Many other jurisdictions that have already implemented source water protection programs have concluded that aggregate extraction represents a low or negligible risk.

I would like to read you excerpts from a conclusion reached recently in a New York state hearing: "[M]ore than 300 sand and gravel mines operating in the state mine aggregate below the water table. In its experience, no such mining activity has ever resulted in the contamination of a drinking water supply.... A comprehensive review of the scientific literature, field interviews with water supply managers, and an examination of case studies from New Hampshire, Ohio and New York, concluded that they had 'found no scientific documentation containing evidence that excavating gravel above or below the water table was detrimental to an underlying aquifer.'"

Pits and quarries are interim land uses. Rehabilitation can create drinking water reservoirs. Pit and quarry lakes increase water storage in the watershed. They can help to regulate stream base flow and shorten natural drought cycles.

It concerns this industry deeply that, through this bill, source water protection plans and the local agencies that

prepare them will effectively regulate land use in Ontario, bypassing and overriding the normal checks and balances already established under the Planning Act, with no assurance of recourse to an independent hearing before the OMB. The so-called "primacy clause" in subsection 35(4) of this bill only heightens our concerns.

Furthermore, we believe that the proposed act could be misused by local authorities to implement policies that are even more restrictive than intended by the government. We urge the province to re-examine the bill and consider changes suggested by us that could alleviate these potential problems.

The government must move immediately to provide interim guidance to local authorities that are already creating source water protection plans in advance of the province's own legislation, regulations and guidelines. A recent example includes the Grand River Conservation Authority, which has passed a resolution that would effectively place a moratorium on below-water-table aggregate extraction in the entire watershed. It is our belief, based on consultation with the Ministry of the Environment's staff, that these are not consistent with the upcoming source water planning guidelines.

Ms. Hochu: In summary, then, the OSSGA, along with its members, who are producing essential building materials across the province, support clean drinking water for all the citizens of Ontario. We will continue to collaborate with the government to ensure that we are part of the solution. Our industry is producing its own studies to contribute to the science, and we look forward to sharing those results with you.

We believe that effective source water protection plans can be developed if, but only if, the government sets out clear, consistent scientific regulations and guidelines for local authorities to follow. The province must retain overall responsibility for the plans.

Among our major concerns with the bill is the integration of the source protection plans into local official plans. This is a complex aspect of the bill that, in our opinion, still requires careful and thoughtful revisions to ensure that the management of provincial resources such as aggregates and water are properly balanced, without duplicating existing legislation or overriding due process that currently exists under the Planning Act.

We appreciate the time to speak to you today. We'll ask you to consider these points and others that will be set out in more detail in our written submission, which will come before the August 28 deadline, and we look forward to answering any questions you might have.

The Vice-Chair: Thank you for your presentation. We'll start with the parliamentary assistant.

Mr. Wilkinson: Thank you for coming in. I know one of your members, Dufferin Aggregates, was in at the beginning of the day—and we appreciate it—raising some concerns.

Let me just make sure I've got this in my head straight: You say that particularly for aggregate extraction, specifically underwater extraction, reading the Dufferin Aggregate submission and yours, based on

science, it isn't a threat to drinking water. So if this whole process is based on science, then you should be assured by that. I think we've been very clear about that.

1500

But I think you've gone beyond that by saying you're concerned that municipalities, doing their source water protection, could jump ahead of this scientific assessment and just have a land use ban of one of your activities that would be in contravention of our provincial policy statement about making sure that aggregate supply stays close to where the work is being done. If I'm right, then, you're calling on us at this stage to actually clarify that now to alleviate the fear you have that this could be widespread. Have I got that right?

Mr. Sweetnam: That's right. Our primary focus is that, given that aggregate extraction is currently governed by provincial licences and provincial permits, it would just add another layer on top of that.

As you may know, aggregates can be termed "locally unwanted land use" in some circumstances where a local council may not be supportive of an aggregate application. One of the tools that they're getting to regulate the industry here is the fact that they may have to issue a permit to that gravel pit to operate.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing before us here today and for your presentation. I see that you've taken a lot of initiatives on your own and you're producing studies to contribute to the science side of the analysis. I'm wondering if you could elaborate a little bit more on the studies that you've been conducting.

Mr. Hollingshead: Yes. In fact, maybe I'll just make mention of three very quickly. First of all, the industry itself has commissioned a study on water consumption to hopefully demonstrate and clarify for people that the industry isn't a consumer of water, simply a handler of water. That study has been released in the last week. Secondly, we're part of an MNR research study that's going on that will bring forward case history and literature on source water protection and aggregates in other jurisdictions and hopefully carry on case history examples in Ontario shortly. Lastly, the industry funded a study in the Mill Creek watershed here in Ontario to look at cumulative effects and how those may or may not impact on source water. We're pleased to say that the results are very positive.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for coming today and making a presentation. You note in your presentation that the Grand River Conservation Authority passed a resolution to put a moratorium on below-water aggregate extraction. Can you tell us why they took that step, what their public reasons were?

Mr. Hollingshead: I think the background to it is that the Grand River Conservation Authority were concerned about cumulative effects where there are more than one operation happening in a watershed. Both the Ministry of Natural Resources and the industry feel that the work that's currently being done in Mill Creek watershed,

though, has answered that question sufficiently, and we don't necessarily agree that there's a need to have a moratorium at this time. In fact, the Ministry of Natural Resources has asked to have that removed.

The Vice-Chair: Thank you very much for your presentation.

FRIENDS OF ROUGE WATERSHED

The Vice-Chair: Now we're going to go back to the Friends of Rouge Watershed. I hope they are ready technically. I believe their presentation will have printed copies for all the members in a few minutes.

Sir, when you are ready, you can start.

Mr. Jim Robb: I might just need technical assistance for making sure that the machine is operating.

Thank you, Mr. Chairman and members. It shows the significance of this legislation that we're having hearings in the summertime. People have come back from holidays and things to be here.

While that's warming up, and hopefully starting, I'd just like to thank all of those involved in the preparation of the draft Clean Water Act. In particular, I think that groups like the Canadian Environmental Law Association and Environmental Defence and the coalition of groups and interests that have tried to bring forward comments together have done a really good job. I'd also like to see the draft legislation implemented promptly with some strengthening of certain sections of it so that we can get on with the source water protection plans.

Friends of the Rouge would like to support the joint statement by the coalition of groups that have brought their work to you, including the adoption of the precautionary principle. I think a lot of people who don't work in science a lot may think it's a precise thing and that ecology and hydrogeology are precise. They're far from precise, and it's really important that we have a precautionary principle within the legislation. I was a vice-chair on the Environmental Review Tribunal for several years and did hearings on these matters; as well, I've worked at the grassroots. Each year Friends of the Rouge plants about 25,000 trees and wildflowers with about 3,000 community members and schools. So I've worked from the top to the bottom and I can tell you that where the water meets the land, a lot of things go on that are difficult to predict, even for good scientists. So the precautionary principle is very important.

The involvement of First Nations should be a given. The courts have ruled on that many times.

Sustainable funding will be key for the program. I'd like you to suggest that you need to have the Ministry of the Environment and the Ministry of Natural Resources better funded, not just the conservation authorities. There's a need for more provincial leadership. I see a bit of a delegation down to the conservation authorities and municipalities. That definitely is where the water meets the land and where the plans are developed and they deserve some leadership, but we need the province to show leadership too. I think Walkerton happened parti-

ally because the province withdrew too far from the review process and there weren't enough checks and balances. So we need the province involved.

Ministry of Natural Resources involvement is really important in terms of wetlands and forest protection. Conservation authorities do that also, but we need to realize that a lot of the strength of our water protection lies in our natural forests and wetlands. If you look to cottage country, you'll understand that where there's lots of forests, the water is cleaner. Scientific studies have also shown that watersheds that are forested will be buffered against the effects of climate change much more effectively. Watersheds that have enough forest cover in them—Environment Canada says, a minimum of 30%—will be less likely to suffer extreme shortages of water that will occur in watersheds that are primarily urban or agricultural.

The rest of them you've already heard, so I'll just go through, but we're supporting the joint submission.

I'd like to see some principles more strongly incorporated into the Clean Water Act. I think the avoidance of adverse effects to human and ecosystem health should be really clearly stated, particularly not just human health but ecosystem health, because that's the front line. In a train of prevention or avoidance of impacts, if you just look to people and human impacts and the Ontario drinking water objectives, you will actually be one step back from the front line, which is the protection of the provincial water quality objectives, surface water and fish habitat. They are the indicators that will first show you the trouble signs.

Also, cumulative effects or creeping effects: Often changes occur slowly and in many different areas over a period of time and you don't observe them if you're not specifically looking for cumulative effects.

Public awareness, involvement and empowerment is really important. One of the things that troubles me a bit is I saw the ability to appeal decisions to the Environmental Review Tribunal for directors' decisions and, I think, the person who administers, but I didn't see a public provision for appealing permits to take water and those things to environmental tribunals under a particular type of condition, and I think that's really a necessary check and balance.

I've addressed the precautionary principle.

Issues of carrying capacity and sustainability: In a given watershed—the GTA watersheds are already overstressed and it really is a question of just how much more we can grow, even with improved technology and improved best management practices, and still protect our water quality and our health.

As I said earlier, restoration of forest cover, wetlands and buffers is really important. That's your natural way to purify water. The United Nations has released papers actually suggesting that communities should look at increased forest cover as one way to protect water quality for developing nations, but it also applies—New York City governs large watershed areas to protect its aqueduct and water supply, and they're way in upstate New York.

Water quality trends and reporting are important.

I think the Environmental Commissioner should have a very strong role in reviewing what's going on with the source water protection plans and permits to take water—I don't believe he has that capacity right now—and give you reports on it.

1510

I want to show you an example of a problem. It's the York region big pipe, and to me it's kind of undermining the province's commitment to clean water and water protection. The orange there is the proposed doubling of the big pipe, all the way from up near Lake Simcoe at East Gwillimbury down into Ajax and the water pollution control plant at Pickering. This is a two- to three-metre pipe. Imagine this: We're trying to protect water quality, and right now York region is building a two- to three-metre sewage pipe designed to conduct 700 million litres of human sewage a day right in the middle of an inter-regional drinking water aquifer which many communities such as Stouffville, King City, large parts of Aurora and Newmarket rely on for water. Right in the middle, 40 metres deep in a groundwater aquifer that supplies drinking water, you are putting a huge sewer. If something goes wrong with it—and they all leak over time—it's very difficult to detect and fix before the horse leaves the barn, so to speak. It's 40 billion litres of groundwater that have been removed already. That's enough to supply the eight billion people on earth with five litres for every man, woman and child. And it's polluting wells and streams.

That's not the pipe, but that's how big it is. That's a three-metre pipe. Those are councillors Erin Shapiro and Elio Di Iorio of Markham and Richmond Hill standing in an example of it.

Again, does it make sense to pipe large amounts of human sewage through a major inter-regional drinking water aquifer? This aquifer extends from all the way up near Alliston to near Lake Scugog to all the way over to the Niagara Escarpment, and this is where we're putting this huge sewer pipe, right through the middle.

Ontario's Environmental Commissioner has addressed this at a meeting of Toronto council last fall. He said that there are real issues and real problems here because the environmental assessment process hasn't been followed, and in fact it's been abused and circumvented.

York region has put the cart before the horse. Before they even got permission to double their capacity at the sewage treatment plant on Lake Ontario in Ajax, they've begun building large sections of the pipe. Before they even know they've got approvals for the treatment plant, they're building the big upstream sections of the pipe, and they plan to take 700 million more litres of sewage to the Ajax area. Those beaches in the vicinity of that plant were closed the whole of last summer and, by latest reports, all of this July, by E. coli contamination. The town of Ajax is very concerned. They've asked the province to actually bump it up from a class EA to an individual EA because of the pollution.

In the Rouge, we've taken water quality samples and sent them to expert analytic companies, one used by the

province too, probably. They've found 10 times the provincial limits of E. coli in streams in Markham. In fact, if you were to wade in that stream, and I have, to take samples, you get infections.

This is the water being wasted: Up to 30 million litres a day of clean water is being taken from the ground to lower the groundwater to construct the pipe. More than half of that was being discharged into the sewer. Enough to supply the needs of 60,000 people, or half of the entire Rouge River's flow, is being dumped in the sewer.

This is the impact area. It extends all the way from the top of the Oak Ridges moraine and Whitchurch-Stouffville all the way down into Toronto, all the way from Pickering to Richmond Hill. By allowing this, it's undermining the promise to protect the moraine and to implement the Walkerton recommendations.

That's a sample of it. You can show the overlay of the Oak Ridges Moraine: a 10-kilometre-radius impact area.

The aquifer in York region has already dropped 40 metres in the last 40 years just because of groundwater withdrawals for the growing communities of York region. Forty metres in 40 years: That's a 14-storey-building drop.

This is the drop in the Stouffville well near the headwaters of the Rouge. It's gone down 15 metres just since the start of the construction of the big pipe. Over 150 wells have run dry.

This is an example of damage to one of the Rouge streams, a blatant violation of the Ontario Water Resources Act. The MOE studied it for nine months and concluded that it was a violation but didn't take any action. The Department of Fisheries and Oceans investigated and concluded there was a violation but didn't take any action.

There's a wetland—they're environmentally sensitive areas—just dried up because of the water table lowering. No action was taken.

There's the Little Rouge River, just about running dry. Here's the headwaters, down 25 metres. Here are the TRCA reports on the declines in the stream.

Experts have said it's profoundly flawed, that it's going to have adverse effects, that the region is not following the EA process, that there's harm to fish habitat.

I just wanted to show this as an example of the problems. There are serious problems out there. Because the conservation authorities in this area are funded by municipalities and the municipalities have a big stake in development, the issues of water protection, both quality and quantity, are taking a back seat.

The Vice-Chair: Thank you very much for your presentation. Now we open the floor for questions. I think we start with Ms. Scott.

Ms. Scott: Thank you for appearing here before us today and all the work that you've done on your presentation. I want to go back to one of the things you said at the beginning on the precautionary principle, and we've already brought it up today. Could you tell me

your interpretation of the definition of "precautionary principle"?

Mr. Robb: Well, it's erring on the side of caution. If there's a great deal of scientific uncertainty or if there's a strong debate, you choose the most cautious course that will protect the resource and human health and ecosystem health.

Ms. Scott: And that's your tie-in with the big old pipe. Predominantly, the background that you gave us is that you didn't feel there was a proper assessment done.

Mr. Robb: Ontario's own commissioner said that this was a flawed assessment. Top engineers have said that York region circumvented the act. So, no, there wasn't a proper assessment.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Jim, thanks very much for that. Would this act, as written, prevent the problems that you've shown today?

Mr. Robb: I would like to believe it would, but I have a feeling that politics often overrules science, and in this case the political imperative of helping the developers open up land, accommodating growth in the GTA, really trumped the caution and the science that some people at the conservation authority and the Ministry of the Environment and outsiders may have raised. So it's a difficult question. I think in too many cases politics does trump science.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks so much for coming in today and raising this issue. Of course, we're dealing with the Clean Water Act, and you've raised that about the level of confidence of the public in the process. I wonder if you could comment, as we struggle and deal with the question of implementing the Clean Water Act as it's stated, on your advice to us as to the best way to make sure that we keep the public engaged in the entire process so that it is transparent and accountable to people.

Mr. Robb: Thank you for that question. One way is that you need to make documents freely available to people. A lot of the stuff on the big pipe was withheld from the public or released only after freedom-of-information requests. Some of it was characterized by York region as proprietary or contractor interest, so you have to make sure the public has access. I think the government has tried very hard and done a pretty good job of involving the public in this bill and getting stakeholders to the table. That will obviously have to be continued within the source water protection plans.

The systemic problem I was trying to raise is that conservation authorities like the Toronto region are trying to do a good job, they're trying to apply science, but most of their funding comes from the municipalities. Often, development decisions are already made and then they're asked to not raise too many concerns, and their decision-making body is mainly municipal politicians who have already made commitments on development. So it's very difficult, I think, unless you have more independent reviewers, to get the quality of science that you need and to avoid the political trumping of science.

The Vice-Chair: Thank you, Mr. Robb, for your presentation.

FRIENDS OF RURAL COMMUNITIES AND THE ENVIRONMENT

The Vice-Chair: Now we are going to move to the Friends of Rural Communities and the Environment.

You can start whenever you're ready.

Mr. Graham Flint: Good afternoon, everyone. My name is Graham Flint. I am the chair and spokesperson of Friends of Rural Communities and the Environment. I thank you for giving me the opportunity to speak with you today.

I want to start out by being very clear that we are in full support of this legislation, in contrast to some you may see today who think this proposed legislation is unworkable or unreasonable. We support its timely passage and the extensive consultations that have taken place on such things as the draft legislation, the minister's expert technical and implementation committee reports, and last winter's regulatory discussion paper.

1520

We have identified a number of key areas, some of which we just want to further emphasize our support for and some that we believe would require further attention before the bill's passage. We cannot address all these issues and details at this time, but we will highlight them today and follow up with our written submission. We also want to note that we share many of the same, common positions as the signatories to the ENGO source water protection statement of expectations.

FORCE was established in June 2004 as a federally registered not-for-profit corporation. We are a citizens' advocacy group with hundreds of supporters in rural Milton, Burlington and Hamilton. We are professionally and substantively opposing an application for a greenfield aggregate development in the natural heritage system of the greenbelt protected lands. We are not anti-aggregate nor anti-road, but we do have substantial concerns about this particular development at this particular site for what we believe are substantive reasons.

Current studies project an impact on up to 3.6 million gallons a day from the proposed quarry operation. This quarry operation goes into the same aquifer that feeds the municipal water system of Carlisle, a community of 3,000 people. Its water use is only 500,000 gallons per day. It is estimated that the level of the groundwater table could be affected up to 2.5 kilometres away from the site. This hydrogeological impact will negatively affect a broad range of existing features and land uses, including the municipal wells of Carlisle, the hundreds of residential wells that surround the site, several communal wells in the area, and numerous environmentally sensitive and provincially significant wetlands.

On the next two slides in the handout I've given you, I've shown you in diagrammatic or illustrative form the features I'm speaking about. The first diagram shows the wellhead protection zones that came out of the municipal

study of the protection zones for the municipal supply for Carlisle. The next diagram is the result of our own work and research, showing a GIS output with the various features that I've commented on. On that area, you see the rectangle sort of in the centre of the screen with a purple line. Those are the boundaries of the proposed quarry site. The green areas are the environmentally sensitive areas. The red blobs are the provincially significant wetlands. The blue areas are the regionally significant wetlands. You'll also see an overlay of that same wellhead protection zone on the diagram, the hatched area that runs through the proposed quarry property, as well as all the purple squares, if you will, representing people's homes. You can assume there's a well associated with each one of those homes, since they're all on private systems outside the community of Carlisle.

The act currently contains many important provisions regarding its integration with existing laws, policies and plans. We completely support that whenever conflicts arise, the highest standard of protection for drinking water should prevail. If drinking water is irreversibly harmed, it cannot be rectified or replaced. We support a scientific and data-based approach to the source protection plans, but we'd also like to echo the precautionary principle: Where there are risks or threats of significant or irreversible damage to existing or future sources of drinking water, a lack of 100% scientific certainty should not be used as a reason to postpone or avoid prevention activities to that risk or threat. Just because you can't be 100% sure, that doesn't mean you shouldn't avoid the risk. The possible negative outcomes of such threats are simply too great to take that chance.

The current form of the act is very weighted around municipal drinking water systems. We do understand the realities of implementation, that there are limited resources, and that achieving the greatest protection for the greatest population—the biggest bang for your buck, if you will—is desirable. But we think some reasonable amendments would afford greater protection to those with private systems.

Under current provisions in subsection 8(3), a municipality can pass a resolution to add drinking water systems that are not yet existing or planned municipal drinking water systems to a risk assessment report. It would be advisable, in our opinion, to add other mechanisms such as public petition or ministerial order—all subject, of course, to certain explicit criteria—that would allow additional clusters of source water locations to be part of an assessment plan. The intention of the cluster amendment would be to try and capture those residential densities and groundwater usage densities that approximate or begin to approximate those of rural settlement areas.

Many provisions within the act limit the ability to prohibit, regulate or restrict land uses to only those of significant drinking water threats such as to surface water intake protection zones and wellhead protection areas. We feel this should be reviewed and broadened to

include areas such as groundwater recharge areas as well as highly vulnerable aquifers.

We are fortunate in our particular situation to have a good working relationship with the local individual farmers and with our regional federations of agriculture. The farming community is as concerned as we are about having plentiful and safe drinking water for their use as well as for use in their operations. They are very sensitive to the blame game post-Walkerton. Source water protection will succeed if we work together as partners. As such, we feel that source protection committees should include farm community representation.

In addition, risk assessment reports and source protection plans need to recognize and appropriately value the practices and processes that are already in place. Examples would include environmental farm plans, best management practices and sound nutrient management plans.

Sections 83 and 88 deal with expropriations and limitations on remedies. Some wellhead protection areas and other vulnerable areas may require lands to be taken out of agricultural production or experience changes in production for source water protection purposes. These sections should not preclude any of the kinds of land leases such as used in hydro rights-of-way and other similar circumstances. These approaches, in our opinion, would engender support from the farm community for source protection initiatives. As a theme, we feel that source protection plans need to reflect a stewardship and partnership orientation while still carrying a regulatory impact.

We understand that the regulations in this act, rather than the legislation itself, will prescribe how activities and land uses will be regulated. However, it bears repeating that aggregate development, despite the prior speakers, while important to our everyday activity and our provincial infrastructure in general, poses a risk to source water and drinking water and should be prescribed as subject to risk and subject to management prohibition and regulation. This is particularly true for those operating below the established water table.

Many groups such as ours will be watching to see how the government responds to the aggregate industry's efforts to avoid or minimize the regulatory burden that is put on that sector. We will also be watching to make sure that the transition regulations for sections 49 to 51 are not so broad as to provide loopholes from source water protection plan obligations for existing or pending applications.

The Ministry of the Environment's expert technical committee included aggregate development, notably that which is below the water table, on the list of provincially significant risks. We support that work. Aggregate development is inherently a risk for both the quantity and quality of water. This is due to the opening of pathways to drinking water sources and due to the inherent nature of on-site activities. I would suggest to you, by the way, that blasting, which is the first step in most quarry operations, does introduce chemicals into the environment.

While we support regulating drinking water threats, we do have some concerns about the permit approach that's currently proposed. In our opinion, the permit approach does not seem feasible, and this will be of concern to many sectors, and I believe you've heard some of that feedback. We feel that a risk management plan approach that is legally binding and backed with orders for noncompliance would be consistent with the proposed interim protection measures and would be more reflective of a partnership and stewardship approach to source water protection.

The Acting Chair (Mr. Ernie Parsons): One minute.

Mr. Flint: Individual landowners, farmers and other operations would be able to evaluate their risk profile in relation to the vulnerable areas that are identified, and then evaluate a range of risk management strategies and develop a plan that is most effective and cost-efficient for both them and the public. This approach would allow for appeals to the Environmental Review Tribunal but also carry strong enforcement.

Protecting source water is an immediate imperative. There should be no delay in the way we do this, but we do realize that study is required in order to do this protection appropriately. The act requires a bunch of promising measures now, but we think there are more things that can be done.

In our particular situation, we have the authorities involved in source planning work. The Grand River Conservation Authority is quite advanced, but the Hamilton and Halton conservation authorities are much earlier in their work. We doubt whether they'll be able to be done by 2009. So this leaves us at risk.

We believe that the following three basic actions should take place—

The Acting Chair: We're out of time.

Mr. Flint: Okay. Then all I'll say, in wrapping up, is that we believe that this act is critical in protecting our drinking water, we think its passing should be immediate and we strongly support it. We appreciate the time to speak to you.

The Acting Chair: Thank you. We have five minutes for questions. I believe it's the official opposition first.

Ms. Scott: Thank you for appearing here before us today. I know it's a large bill to decipher and give us 10 minutes' feedback on, but I appreciate some of the points you made.

You talked about more of a risk management approach, and I've been speaking with a lot of farm groups and they want a proper appeal mechanism. Is the Environmental Review Tribunal where this appeal mechanism should go? There are agriculture or farm tribunals that exist now, and there is more of a co-operative atmosphere. Do you think that might be a better approach to take?

1530

Mr. Flint: I think that is the theme of the feedback I was giving in that area. A pure permit approach that's either "yea" or "nay" with no ability to engage in subsequent conversation, appeal or discussion is a risk. I

think a much more partnership-oriented approach, where there's a variety of plans, a consultative period, you try to resolve the issues, and then if not, you go to some sort of appellate process—yes, we would recommend that.

The Acting Chair: Third party?

Mr. Tabuns: I have a question, but first I just want to say that it would be useful for me if you would take your recommendations and put them in legislative language, so that when I make amendments, I've got things right at my fingertips. Having said that, the question I have about this permit approach versus a risk management plan, I have concerns about a risk management plan getting to be soft, maybe even soggy. Why do you think it's a better approach?

Mr. Flint: I think our concern really derives first from just the volume that might happen in the permitting approach. It could be overwhelming with the number of permits that will be applied for in a short period of time, as the legislation is rolled out and enacted. We think that what we really should be doing is, rather than dealing with all things that would need to be permitted, big or small, riskful or non-riskful, we should identify those high-risk areas, try to do plans around managing that risk and then work at it through that way in a more consultative process. I think it's a logistics thing that brought us to this thought process that it would just be overwhelming to try to handle the number of permits we expect might be applied for.

The Acting Chair: The government side? Ms. Wynne.

Ms. Wynne: Thank you very much for being here. I just wanted to make sure you knew that this morning the minister did talk about the fact that we're looking at risk management plans as a—

Mr. Flint: I did not know that. That is wonderful.

Ms. Wynne: Yes; she did talk about that.

The second thing: You talked about the restrictive land use and regulated activity, sections 49 and 51. I just wanted to clarify: You think they're fine the way they are?

Mr. Flint: I think they're fine the way they are, but they need to go broader. Right now they're limited to surface water intake areas and wellhead protection zones. We think significant at-risk aquifers and recharge areas should also be included in those prescriptions. So I like what's there; I think it should apply to other hydro-geological features.

Ms. Wynne: Okay. And the third thing I wanted to say: You didn't quite get your presentation finished. Was there anything else you wanted to add?

Mr. Flint: Just that it's very important that this happens. We're in a situation right now where we're finding that the regulatory bodies which we think should be protecting us from some testing that's going on in relationship to this development seem to feel that they can't do what they need to do. We've got a groundwater recirculation system where they're proposing to pump water that enters the quarry back into the aquifer, and we're going, "Whoa, isn't that nervous?" MOE says,

"Yes." Thermal plumes and bacteria: There are a lot of issues. The only tool that seems to be available is a permit-to-take-water refusal, and that only kicks in if they take enough volume of water. If they're under the volume of water, 50,000 litres or whatever the value is, then they don't even need a permit for that. So my last point was going to be that something needs to be done, that right now we think our sources of drinking water are threatened. There isn't an appropriate framework in place today, and this legislation is needed.

Ms. Wynne: You think it's a good start. Great. Thank you.

The Acting Chair: Thank you for presenting to the committee.

ASSOCIATION OF LOCAL PUBLIC HEALTH AGENCIES

The Acting Chair: We will move next to the Association of Local Public Health Agencies, represented by Linda Stewart. Good afternoon. You have 10 minutes, followed by five for questions.

Ms. Linda Stewart: Thank you. Good afternoon. My name is Linda Stewart, and I am executive director of the Association of Local Public Health Agencies, also known as ALPHA. With me today is Ralph Stanley. He is a supervisor of public health inspectors with Peel Public Health. ALPHA represents the interests of boards of health, medical officers of health and affiliate groups who work in public health. I'm pleased to be here this afternoon to address you on the very important issue of source water protection in Ontario.

Ensuring safe drinking water has long been a mandate of public health under the Health Protection and Promotion Act. We have a strong interest in source water protection and are very pleased to see Bill 43 put forward to ensure the safety of existing and future sources of drinking water. This proposed legislation goes a long way to protecting sources of drinking water in Ontario, thereby protecting and influencing the health of Ontarians.

The existence of Bill 43 reminds us that we cannot take sources of drinking water for granted. When I think of the things that are most important to sustain human life, safe drinking water is very close to the top of the list. A person can survive for a couple of months without food, but only a few days without water. As an essential element of human survival, access to safe drinking water is a basic human right.

I haven't told you anything you don't know. Even though we all understand this, other priorities are sometimes put ahead of maintaining sources of drinking water. This is evidenced by the pre-existence of legislation that contains environmental and source water protection elements. These acts are listed in section 35 of the proposed legislation and include the Oak Ridges Moraine Conservation Act, 2001.

I happen to live in the community of Markham, and I remember the sense of panic in that community when

citizens became aware that the Oak Ridges moraine and the source water there was in danger. You will recall that it was necessary to pass legislation to put a six-month moratorium on development until the government could create a plan for the moraine. I can tell you that citizens in Markham continue to keep a watchful eye on this important resource and have a new respect and appreciation for the role of conservation authorities.

It's hard not to review Bill 43 with the eyes of a citizen but, in my professional role, I have reviewed the draft legislation with a public health eye to the potential implications for public health units across Ontario and, specifically, for boards of health and medical officers of health.

The proposed act is comprehensive and enables excellent processes for risk assessment, planning, monitoring and follow-up regarding source water protection.

The first comment I would like to make is in regard to the consultation processes for the development of the terms of reference, assessments, and plans for the source protection authorities and the drinking water source protection committees. The proposed legislation stipulates that the municipalities falling within the geographic boundaries of the source protection authority be consulted during the development of these key documents. It should also be mandated that consultation with boards of health be part of these processes. In this way, boards of health and medical officers of health will be fully informed and will be able to lend their considerable expertise to the processes involved.

Given that boards of health are one of the options in the proposed legislation for the monitoring of any approved source water protection plan, it stands to reason that they should be involved in the front-end process. Boards of health should also be consulted on any amendments to the terms of reference, assessment or plan.

The second area I would like to address is that of issues identified during the assessment work described in the proposed legislation. Where an assessment identifies a significant threat to source water, especially where that threat poses imminent drinking water safety concerns, the medical officer of health should be provided with the information in a timely fashion. Under the Health Protection and Promotion Act's mandatory health programs and services guidelines, boards of health are responsible to ensure that community drinking water systems provide safe drinking water. It is imperative that the medical officer of health be informed of any known threats so that he or she may do their job to minimize water-borne illness.

I am sure you're aware that currently a number of agencies play a role in ensuring the safety of drinking water in Ontario. It is important that these agencies continue to work together. Public health units already have working relationships with many of the players involved in protecting drinking water. These relationships should be encouraged through the legislation. In addition, ongoing working relationships between all the ministries

involved in the protection of drinking water should be encouraged through the legislation.

The last item I'd like to address is that of resources. The establishment of source protection agencies, drinking water source protection committees—you might want to streamline that name—as well as the carrying out of assessments and ongoing monitoring, is going to require an increase to both financial and human resources for the organizations involved. The proposed legislation, if passed, will carry with it a significant front-end resource burden to establish agency and committee infrastructure and to carry out the initial assessments across the province. I would ask that the government recognize this front-end requirement and ensure that appropriate levels of funding are in place when the act is passed and comes into force. Ongoing funding to support the work of the source protection authorities also must be established.

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I'd like to close by sharing a recent experience with you that really brought home for me the importance of protecting source water and drinking water. My step-daughter has been living in Indonesia for the last two years. In July, she and a friend visited my home for a few weeks. When she first arrived, she thought she would play a joke on her friend. What she did was go over to the cupboard, pull out a drinking glass, fill it with water from the tap and start to drink. I watched as her friend looked confused and concerned, and then of course when they figured out the joke, laughed. In Indonesia, this act would have been a silly act. This act would have been a guarantee that she would have been sick. In my Ontario kitchen, it was a safe, simple, everyday act, a simple act that most of us take for granted. Bill 43 is important. It recognizes that source water protection and clean drinking water cannot and should not be taken for granted.

Thank you for your attention.

The Vice-Chair: Thank you for your presentation. We have enough time for questions. I believe we start with Mr. Tabuns.

Mr. Tabuns: A number of people who have spoken today have called on the government to incorporate the precautionary principle directly into the language of this act. I assume that your organization would support that insertion as well?

Ms. Stewart: Yes, I think that would be a very important addition.

Mr. Tabuns: There have been some questions around the table about what is the precautionary principle. Maybe you could just speak to it very briefly.

Ms. Stewart: Actually, it depends on precisely what precautions you want to take. I think of it in terms of public health, and I think of the precautionary principles around ensuring that, as I've said, the medical officers of health are informed of issues and that they are involved in the planning processes. Actually, you might be able to add a bit.

Mr. Ralph Stanley: Yes. From a public health standpoint, if you don't always know the science or the literature, you have to take a precautionary approach

when you're dealing with something. It could be drinking water; it could be high tension lines for a hydro corridor. If you don't know the exact outcome, sometimes you have to take a slow approach, review the research and, if research isn't there, you have to take an approach that is probably a little more prescriptive than you would normally do.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you so much for coming in. Since we're sharing, I can tell you of my own personal experience with our own medical officer of health, Dr. Rosana Pellizzari, in Perth county. Unfortunately, as a community, it was discovered that chemicals had been injected into our water system, and our medical officer of health was a tremendous leader in keeping our community safe and making sure that people didn't become ill, because the things that were supposed to happen, happened, like things that we learned from Walkerton.

Going beyond that, I just want to let you know that, as we mentioned to the Ontario Medical Association, section 80 of the bill does require that the ministry be notified by anybody acting in an official capacity who sees that there is a threat to drinking water. The assumption would be, of course, that the ministry would tell the local medical officer of health. It usually goes the other way, because of our spills action reporting centre. So I guess your position would be we should make sure that there is some redundancy there, to make sure that it must happen. We're glad that that was brought up.

About your question about the role of medical officers of health, do you think they should be on the committee or do you think we should make them ex officio to all the committees, so that they're there as the expert as opposed to being one of the participants, having a vote and going to these meetings? Or should the medical officers of health actually be put in so that they're ex officio? Do you have a comment about that?

Ms. Stewart: This is an issue I have given some thought. I believe that the ex officio role is the more appropriate one, that they be there as a resource. Further, I would suggest that they also be given a choice as to whether or not to participate or to send a delegate, depending on the level of expertise that any individual medical officer of health might have on the specific issues.

Mr. Wilkinson: Great. Thank you.

The Vice-Chair: If there are no more questions, that's good. Thank you very much for your presentation—oh, my apologies.

Ms. Scott: No problem.

The Vice-Chair: It's all yours.

Ms. Scott: I could not agree more with your statement that the front line of our health is the water system and to have safe, clean drinking water—there's no question about it—which brings us to the concerns that you mentioned about costing. How do you feel about—the municipalities are really going to bear the burden of the cost of the implementation of this, and the liability also? We've brought this up many times today, but I want to

reinforce the point that I don't think we can accomplish source water protection in the Clean Water Act without more provincial involvement. Do you think it's possible the way it is? Do you think that the province should have more of a role in the Clean Water Act?

Ms. Stewart: I would like to see the province have more of a role. I agree with you that it's not going to be possible to achieve everything, given the current state of resources. Certainly, we know that there are shortages of inspectors in all areas. There are shortages of other key staff who would be needed to implement some of these things. Having said that, I still think it's extremely important to move ahead with the act and get something in place that will provide a framework, if you will, to get things moving.

I wouldn't want to see a large burden fall on municipalities. They already think they have a large burden with public health, and I'm well experienced in what that has done. I tend to be a person who likes to see a sharing of responsibility happen, especially when it's a local initiative and a local issue, although there is clearly a strong role for the province, especially up front.

Ms. Scott: Thank you very much. I appreciate your being here today.

The Vice-Chair: Have you finished your questions? Thank you, Ms. Scott.

Thank you very much for your presentation.

NORFOLK FEDERATION OF AGRICULTURE

The Vice-Chair: Now we have, I believe, the Norfolk Federation of Agriculture. Are they with us? Welcome, sir. You can start whenever you're ready. As you know, the procedure is 10 minutes for the presentation and five minutes for questions.

Mr. Vic Janulis: Very good. Thank you, sir.

My name is Vic Janulis. I'm with the Norfolk Federation of Agriculture. I'm also a director with the Ontario Federation of Agriculture. At our county in Norfolk, we've been working on a lot of self-management systems. In one of them, we implemented an irrigation advisory committee, a pilot we started about three years ago, which is a farmer self-management system of water use in irrigation. The irrigation advisory pilot for self-management of agricultural water users within the Big Creek water basin is a committee to provide a source of organization, education, co-operation and mediation for agricultural water users so they may best manage the available water resources amongst themselves without disrupting the natural functions of the streams during dry periods.

This irrigation advisory pilot project has been a great success. The agricultural water users have been organized into functioning working groups, and co-operation has been fostered within these groups. The irrigation advisory committee has been a tool for dissemination of information and education, such as best management practices and other things amongst agricultural water

users within the water basin. The IAC has shown its ability to mediate disputes within the farming community. But above all, the IAC has been shown to be a tool for the agricultural water users to manage the available water resources amongst themselves without disrupting the natural functions of the local streams. This is just an example of how we can self-regulate water resources.

To further expand the IAC—irrigation advisory committee—idea, we've partnered with the Oxford, Brant and Elgin federations of agriculture, along with the Long Point Region Conservation Authority, the Grand River Conservation Authority and the Catfish Creek Conservation Authority, to expand the irrigation advisory idea into those counties to help them coordinate their water use. This is just an example of how we can, and do, self-regulate.

Down on the farm, we live where we work. We drink the water that sits below our soil. We eat the food produced on our land. Today you can track a single apple in a grocery store back to its producer. You can track milk back to the cow it came from. You will be able to track vegetables back to the actual field they came from. A steak can be tracked to the actual animal it came from. Most of these changes have been brought about voluntarily within the farming community because this is what our customers are asking for. Farmers have always been on the cutting edge of adaptation to new techniques and technologies.

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All this, and Bill 43 basically tells us that you cannot trust us to be vigilant stewards of the land and water we use. You say we need to be further regulated, and if this regulation causes undue hardship through restriction of land use and devaluation of property values, you say we are not entitled to compensation.

In Norfolk county, we sit on what is called the Norfolk sand plain. So basically this piece of legislation would de facto affect the whole county by way of the way this bill is written.

You have already heard the key concerns the Ontario Federation of Agriculture has with this bill and the amendments it recommends be made to the bill before its final passing. The Norfolk Federation of Agriculture and I wholeheartedly endorse these recommendations and hope that you do implement them before the bill is law.

The bill states its purpose; it says, "The purpose of this act is to protect existing and future sources of drinking water"—at first glance a noble sentiment but a statement whose implications in Norfolk could be disastrous under a regime where restrictions could be imposed county-wide without compensation or recourse to appeal.

Should the precautionary principle and not science-based common sense be used to impose any restrictions on land use in our county? I'm afraid that the discontent in the rural communities that is out there now may continue to boil over even more.

You say this could never happen, that something could cause us a concern. When petty bureaucrats are given

free rein, abuse is sure to follow. You only need to look at Windsor and that egg salad boondoggle, where bleach was poured on sandwiches by health inspectors because they were overzealous and the legislation empowered them to become so. I foresee the proposed permit system open to such forms of abuse.

If you are to impose restrictions on farmers who have a proven record of being excellent stewards of the land and water they themselves live on, these impositions need to be based on cold, hard science, and the onus should be on the ministry to prove that these impositions are warranted. Failing that, full compensation needs to be attached to any and all impositions.

In Norfolk, our trust in the Ministry of the Environment's ability to be fair in its dealings with farmers has been sorely tested. There is a regulation that farmers who use irrigation water are required to have a permit from that said ministry to take water. This spring, after processing of the permit-to-take-water applications, a number of farmers were shocked to find that their 10-year permits were reduced to two. Some of these permits the ministry approved were on water-retention structures that were built with co-funding from the ministry. Permits were sent out at busy times of the year, with a window of appeal of only 14 days, which included mailing time and weekends. Luckily, two of our farmers managed to react in time to appeal their permits through a formal hearing process. But this hearing process is very daunting; as the ministry told these two farmers, "You'd better have yourself a good lawyer."

In Norfolk, we have been proactive in our county by organizing clinics in partnership with the Ministry of the Environment to see that all irrigation users in the county abide by regulations and get all proper permits in place. Our reward for being good, law-abiding citizens? A moratorium on the issuance of new permits to take water, be they municipal, commercial or agricultural. Some bureaucrat in the ivory towers of Toronto decided that we are using more than 10% of the available water resource in our county, and therefore a moratorium is called for. However, extensive hydrogeological studies funded by that very same ministry to the tune of several million dollars clearly shows that at best we are only using 7% of the available resource.

We currently have a fish farmer wishing to sell his operation, but because existing permits cannot be transferred and new ones will not be issued, he is caught in a classic bureaucratic Catch-22.

Needless to say, our local farmers and municipal councillors are upset. We are currently going through a rationalization of the tobacco industry and looking to vegetable processing and other industries to further diversify our economy. Many of these new industries require access to abundant sources of clean water. From one side, the face of the powers that be is telling us, "Yes, diversify. Do other things," but from the other side they're saying, "No, there will be no new development of your county because you will not be allowed any new permits."

The goal of clean, sustainable drinking water from now into the future is a commendable one. However, history has shown us that bureaucratic abuse of process is prevalent and ongoing. Our mistrust of the ability of the Ministry of the Environment to be fair and impartial is science-based. They have proven that they cannot do so. So I urge you to make the amendments to the bill that the Ontario Federation of Agriculture is proposing. The wording of this bill needs to be tightened up, or abuse of process will occur. Do not pass a bill that allows de facto annexation of private property without compensation.

Thank you for listening.

The Vice-Chair: Thank you for your presentation. Parliamentary assistant?

Mr. Wilkinson: Thanks, Vic, for coming in. We appreciate it. Ron was here earlier on behalf of the Ontario Federation of Agriculture, and we appreciate the fact that you're here.

I was wondering if you could just give us some more background about your local initiative in regard to irrigation. It sounds similar to my own county of Perth, where we have our peer review committee, which is made up of farmers. You were talking, and the minister mentioned it again this morning, about how we all recognize that farmers are the best stewards of the land and water because it is their life, their lifeblood, and they're attached to it, unlike some of our friends from urban Ontario, who are a little bit more detached from it, as you and I know. So can you just tell me about how that works? They'll be struggling with models about making sure this is fair and how to implement, but who picks up the cost? Are people volunteering their time to serve on this?

Mr. Janulis: Because this would be requiring someone to leave their premises during the busy time of year to go out and mediate a dispute or whatever, we have acquired funding from different sources to pay people to do this. They will have to walk away from their operations when they are working to go and do a mediation. To ask them to do this voluntarily is grossly unfair.

Mr. Wilkinson: Is it the county or OMAFRA? Who helps you with that?

Mr. Janulis: We have funding from the Canada-Ontario water supply expansion program, COWSEP, so that's where the funds are coming from for the next two years. With those dollars, we are expanding into the three surrounding counties.

Mr. Wilkinson: And a model like that, you think, is where we should be going to make sure we have that local buy-in and that people are working together.

Mr. Janulis: It's good because, if there is a problem between farmers, we can go out there and resolve it before it becomes an issue where the ministry has to be involved. It's much better that we can go in, we can talk, without somebody coming in with a big stick. We're strictly giving advice. It's not mandatory that they take it.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thanks, Norfolk federation. Being from the area, I do know a bit about the self-regulation pro-

gram where a number of farmers, say, on one stream—seven or eight farmers—have a subcommittee and they coordinate access to the water to ensure that the one furthest downstream gets access to good-quality water. It's a system I've seen in Indonesia, for example. This is an ancient system in many parts of the world. In fact, irrigation-based agriculture, whether it's carrots or potatoes or tobacco, has been present on that sand plain since at least the 1950s.

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We have encouraged farmers, through government, to get these permits to irrigate. Many farmers have updated their system; they've co-operated with the government and the conservation authorities. To have a moratorium brought in based on a kind of top-down decision that was made prevents any access to new water for, say, fruit and vegetable processing. Very simply, on that Norfolk sand plain, which covers a number of counties—Oxford, Elgin, Brant, Norfolk—if you don't have a permit or if you are not allowed to irrigate, you do not farm. It is that simple. It's irrigation-based agriculture. There's no other way you can grow these crops on that sand without irrigation. It's a very serious situation.

It's an excellent pilot project where farmers pulled this together themselves through the Ontario Federation of Agriculture, the conservation authorities and the Ontario government. We have a situation now where we can learn from this model. But, essentially, the people down there now are the canary in the coal mine. If they have this permit yanked, they're done, the land is worthless, because you can grow nothing there without irrigation.

Obviously, the Norfolk federation supports the OFA. Again, I don't know whether you have any specific local recommendations. We do know that the OFA wants any reference to "permits," "permit official" or "permit inspector" taken out as far as their application to agriculture.

Mr. Janulis: The whole idea that someone would have that type of power over your operation, that some bureaucrat can basically tell you yes or no as to what your livelihood is or can be, is frightening. No, it's not something we could endorse in any way, shape or form.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for coming down here today to make the presentation. The whole question of compensation for land whose use may be changed by this act: Is that in very many ways the central question for the farmers?

Mr. Janulis: It is, because if a municipality wants to, say, set up a new well source or whatever, I don't see why the surrounding farmers need to be imposed upon. If they want to set up this new system, why don't they just get control of the land, be it long-term leases or something else, so that they have absolute control of the whole area that comes into question? Why do we have to suffer, not due to our own fault? We're not doing anything wrong.

The Vice-Chair: Thank you, sir, for your presentation.

HALTON REGION FEDERATION OF AGRICULTURE

The Vice-Chair: We have right now the Halton Region Federation of Agriculture, if they can come forward.

You can start whenever you're ready.

Mr. John Opsteen: Thank you, Mr. Chairman, committee members, ladies and gentlemen. My name is John Opsteen. I am currently the president of the Halton Region Federation of Agriculture. The Halton Region Federation of Agriculture consists of about 400 member farmers and their families.

Bill 43, the Clean Water Act, will greatly affect the farming community as to how we farm and how we do our business. There are many technical questions that need to be addressed about the details and the all-encompassing effect on farming in Ontario, but my presentation today will be addressing a more ideological concern about the act and its process. The three main topics that I will attempt to pass along to the committee are the timing of the process, the issues surrounding enforcement, and compensation.

I know that this has been a long day and a long process, but the timing of these hearings in late summer is very difficult. Farming is not a 9-to-5 job, as you probably all know, and at this time of year farmers are still on the land, harvesting grains, making hay and working long hours. There are only so many hours in the day, and the legislation is going to have a very profound effect on farming. It's a shame that farmers, the most greatly affected, would have trouble being part of this process. I know the old joke in Ontario is that there are two seasons—winter and construction. In the farming community, that's also the case. We have two seasons: the farming season, basically most of the spring, summer and fall; and then we have the meeting season, which is most of the winter. Hopefully we can get more discussion of these kinds of things during that time, when more farmers are available.

Secondly, the issues surrounding enforcement: It's a different world that we live in now. Twenty years ago, "biosecurity" was a word that was only used probably in high-level labs, but today in agriculture it's commonplace. Because of issues like avian influenza—myself, I'm a chicken farmer, and I must document all visitors to my farm to ensure they're safe to come into my controlled access area around the barn. I keep the barns locked to ensure that no one brings disease into my farm. Other types of farmers have similar concerns; for example, weed transfer etc. Allowing enforcement officers to come onto farms without proper understanding of these issues could lead to very serious problems for farmers and for the agricultural economy in general. Biosecurity must be addressed in the enforcement of this act.

Lastly, the issue of compensation: I'm aware that you've heard many delegations today, and you will hear many more over the next week, so I'll try to put a little

bit of a different slant on it for you, about the lost opportunity because of further restrictions.

If you'd all just imagine that we are at a party—and not a political party; kind of a fun party—

Ms. Wynne: There is a difference.

Mr. Opsteen: There is a difference, definitely.

Someone has the idea to order pizza. So the party's host—and we'll say the government is the host today—gets some input from some of the guests on what toppings to order on the pizza. Then the host takes that input and makes the call on what to order and where to order it from. Now, if it's like the parties I have been to, when the pizza does arrive, folks basically attack it and grab the boxes and you have the delivery man left standing there, still with the bill. But again, at the parties I go to, everyone throws in a few dollars and no one is left holding the bag and having to pay for the whole shot.

This process is a very simple form of something we are discussing today. However, instead of passing the hat and society as a whole sharing in the cost here, the farmers, through added restriction on their own land, are being forced to foot the bill while society enjoys the pizza. I don't really feel that this is fair. If a farmer has restrictions placed on his or her farming operation, and these restrictions are in place for the betterment of society, and these restrictions cause financial losses, then it makes sense that society should reimburse the farmer for those losses. For example, in an area of a municipal well, if a farmer may not use his land or may not use fertilizer or has other restrictions, it would be expected that there would either be no yields or yields would be much lower and quality would suffer. Should not the farmer be entitled to fair compensation?

I look at this compensation as preventive maintenance. In my barn, I fix things, hopefully before it's needed, and I update equipment regularly because I don't want to get into those bigger problems later. As a chicken farmer, with that great heat, I'm glad I had the generators and the good fans and things like that which I have updated. I think the money that I spend is money well spent, and I think that compensating the farmers is also money well spent for the government and for society at large.

When we look at these kinds of things—we have the Expropriations Act. I don't know a lot about it, but the way I understand it is that the government would take ownership of a piece of property, compensate the owner, and the government takes control of it for the public good. They can also take control over property for the public good without taking ownership, through restriction, without having to compensate the owner. It's a very fine difference between those two things, but the government still has control over that property for the public good. Just because the law, as written today, doesn't require compensation doesn't mean it can't compensate farmers. I think it should be added to the Clean Water Act. There are many ways to figure out this compensation and many ways to figure out where that money comes from. I heard the discussion earlier, and I'm not sure where that goes. It depends what side of the table

you're sitting on, I guess. But I do endorse the Ontario Federation of Agriculture's thoughts on compensation discussions that way.

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In conclusion, I'd just like to say that with all these issues I've brought up, I don't think it will hinder the government's ability to do what is best for society now or in the future; I think it allows the province to do it in a more responsible manner. As farmers, we are concerned about water quality because our families drink from wells and our livestock need high-quality, good water to be healthy. We're willing to pay our fair share, but so must all Ontarians. The costs, both real and opportunity, should not be left for the small minority, the farmers, to bear while the majority of society gets to—I'm going back to my earlier thing—eat the pizza.

I hope you take my comments into consideration, and I'll be happy to answer any questions. But I also would agree with my colleague from Norfolk county. I do agree with the recommendations for the amendments from the Ontario Federation of Agriculture. I didn't hear all of their presentation, but I have looked it over. Thank you.

The Vice-Chair: Thank you, Mr. Opsteen, for your presentation. Now we have time for questions. Mr. Barrett.

Mr. Barrett: I thank Halton federation for coming forward. There's no question that toward the end of the summer is the last time someone working on the land would be able to come out or consult, even before coming out to a meeting like this.

As you know, this legislation has nothing in it as far as compensation. There is nothing written within the legislation, in contrast to, say, Manitoba, which has, right in the legislation, the set-up for a trust fund, if you will, to assist people to clean up where need be to ensure people in town have clean water.

The other side of the compensation that you were referring to is where you have these kinds of restrictions on what you do with your land, again, to protect water for people in town. I know the OFA has made some suggestions of how that can be done rather than essentially a taking. In the province of Ontario we do not have property rights, so government can take and rezone, can greenbelt or whatever, as you may know in your neck of the woods.

The one proposal is—I think of the town of Simcoe. Water supply is based on wells. To protect the area, years ago they bought the land where the wells were. More recently, that land got sold for some reason, and now it's back on the private landholder to provide the assistance.

Do you see it as a viable situation for municipalities, if they want to protect the water, to either purchase that land or, if the landowner doesn't want to sell, to at least lease water rights to protect it?

Mr. Opsteen: I think those options of long-term leases are a possibility. The previous speaker spoke about long-term leases. The farmers are providing that service in that restricted area for the good of everyone. I think in

general that everyone can pitch in a little bit to help out for those opportunity costs lost and actual costs.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks very much for coming down and making a presentation today. This whole question of biosecurity is an interesting angle; I haven't heard it from others. How do you suggest it be addressed in the bill?

Mr. Opsteen: Well, that's a tough one. I know when the generic reg. discussion was happening at the conservation authorities, I went to a couple of meetings and brought up the biosecurity issue with their officers, and I was greeted with a few blank stares and they weren't really sure. We talked about it after, and there are ways that the farming community and enforcement officers can work on this. It's not going to be cost-against-cost or anything like that; it's just taking the time to think, contacting people, making sure you're wearing clean clothes and things like that. I think in the act, just to state that biosecurity of farms will be respected, something to that effect, makes all the conservation authorities take notice of that and investigate.

Mr. Tabuns: That's good. Thank you.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming, John, and thanks for the leadership role you're playing in Halton.

At the beginning of the hearings this morning, the minister was here, and I just want to quote what she said. I'm sure it will make your members happy: "We will introduce changes"—which means the government will propose amendments—"that will require officials and inspectors to have a specified set of qualifications, including training in biosecurity and the appropriate health and safety protocols, in order to be appointed to their jobs."

We appreciate the fact that farm organizations such as OFA and OFAC have all been telling us that this is important. We're hearing it from the ground from your federation. So we appreciate that.

The minister also mentioned, I'm sure you'll be happy to know, that we're looking at the question in regard to permit officials, that they become risk management officers; in other words, risk management, working consultatively, collaboratively, first as the—I think ultimately the government has to have some power to enforce when someone is not having any care about allowing a significant drinking water threat to be on their property, but that should be the last resort. I think we're going to clarify that.

I guess my question, though, for you would be centred around the question of compensation. We've had some debate on this. Would you see that as being a shared responsibility by the people who are drinking the water, by the municipality, which is everybody in the municipality, or the provincial government and/or the federal government? Where do you see the money coming from? What do you think is fairest?

Mr. Opsteen: What is fair?

Mr. Wilkinson: I know you don't want—

Mr. Opsteen: I'm willing to pay my fair share, that's for sure, but same as all Ontarians. We all use water. I'm not saying user fees or anything like that, because from the province's side you're probably thinking, "The municipalities can handle it." Municipalities are probably thinking the province can handle it, and it goes back and forth. But I think just putting in the act that we're going to consider compensation, we're going to look at that because we understand that is an issue and there is going to be a cost to farmers—we can work on the details in the future.

I agree with you: Through consultation and discussion—I know you talked about the irrigation committee—all those kinds of things where farmers and politicians and townspeople can work together, we can come up with sensible, logical plans that will achieve the goal. I think when you're looking at legislation, yes, we do need the sticks, but we also need the carrots. We can't put all the money into the super-heavy-duty stick and not put money into the carrots.

Mr. Wilkinson: The whole process starts from the community up. Instead of being prescriptive from the ministry, what O'Connor told us that we should do is make this based on local communities that share water coming together as the first step.

Mr. Opsteen: I would agree. If you want the buy-in from everyone about acts, if it comes that way, it always works better than the down—

Mr. Wilkinson: From the groundwater up.

Mr. Opsteen: There you go.

The Vice-Chair: Thank you for your presentation, sir.

ASSOCIATION OF IROQUOIS AND ALLIED INDIANS

The Vice-Chair: Now we have the last group, the Association of Iroquois and Allied Indians. They can come forward and present to the committee.

Grand Chief Denise Stonefish: Good afternoon. The Association of Iroquois and Allied Indians is a political organization that advocates on behalf of eight First Nations in Ontario, with a membership of approximately 18,000 people. We are comprised of three distinct groupings of peoples, which are the Haudenosaunee, which you may know as the Iroquois Nation; the Anishnawbek; and the Leni Lenapi Nations, who do have aboriginal and treaty rights.

The issue of clean drinking water and the need to protect drinking water sources is an important issue for First Nations, and we can all agree that there is a need for better protection of these water resources.

Earlier this month, our association also made a presentation to the Assembly of First Nations in Canada, which had formed a joint panel that is looking at the issue of safe drinking water for First Nations and will be submitting their findings to the Minister of Indian Affairs at the end of this month.

The message that we urged the panel to bring forward to the federal minister was that both the federal

government and the government of Ontario need to meet on a government-to-government-to-government basis with First Nations to look at regulatory frameworks for drinking water and source water protection that may impact on First Nations.

The reasons for this are:

(1) The crown has a constitutional duty to consult with First Nations who may have rights and interests.

(2) There are larger environmental objectives that the federal government needs to be aware of such as the various Great Lakes water agreements in which the Great Lakes basin is viewed as one large hydrologic cycle and that this had to be considered in any federal regime applicable in Ontario.

(3) We also noted to the panel that the province of Ontario was undertaking actions to ensure safe drinking water through Bill 43 and that the Minister of Indian Affairs needed to be aware of this.

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Today the Association of Iroquois and Allied Indians will advance their concerns regarding Bill 43, and in doing so, we note to the standing committee that neither our organization nor our First Nations that we represent have received additional funding or capacity from Ontario or the federal government to examine this bill. As a result, our analysis is incomplete, and the result is that we can only flag issues and do not have specific answers or solutions proposed at this time.

However, the lack of First Nations consultation in developing this bill is our first concern. In part 2 of the Walkerton Inquiry, Justice O'Connor made specific recommendations with respect to safe drinking water for First Nations in Ontario. We would like to highlight two recommendations from Justice O'Connor's report.

Recommendation number 88: "Ontario First Nations should be invited to join in the watershed planning process outlined in chapter 4 of this report."

Recommendation number 89: It is encouraged that "First Nations and the federal government ... formally adopt drinking water standards, applicable to reserves, that are as stringent as, or more stringent than, the standards adopted by the provincial government."

In examining these two recommendations and in light of the lack of consultation to date, the association—we'll shorten it down to AIAI; sometimes it's a mouthful—is of the view that Ontario is moving ahead without First Nations with respect to Bill 43. First Nations have not been adequately engaged to date, although ministry staff have been in contact with us at different points. Ministry staff may be aware that there is a need to include First Nations, and there may be a lack of political direction to do a better job in consultation with First Nations. However, this does not negate the legal duty for Ontario to consult First Nations. The Ontario Regional Chief, Angus Toulouse, also sent a letter to the minister stating that ministry efforts in seeking First Nations input were inadequate.

In looking at Bill 43, First Nations are written right out of existence. Sections 4 and 5 of the bill identify

jurisdiction and how conservation authorities are going to be taking on jurisdiction and that the minister may become involved in those arrangements. First Nations would like to know how the province has acquired jurisdiction over these waters and how this can now be conferred to the conservation authorities by the minister. Further, in conferring this jurisdiction to the conservation authorities, the province has not identified how it will ensure that the conservation authorities will conduct adequate consultation with First Nations groups which may be affected by source protection planning efforts.

Based on the current absence of First Nations references in the bill, it appears that the drafters of the legislation also intend to reinforce a jurisdictional gap with respect to safety standards for First Nations, and this is totally inconsistent with Justice O'Connor's recommendations. The recommendation from Justice O'Connor was for the province to seek co-operative arrangements with First Nations and Canada insofar as it involved protecting First Nations' interests. Therefore, we make the following recommendation as an alternative to reinforcing a jurisdictional gap whereby First Nations' drinking water and health and safety are not protected by regulation or no other appropriate arrangement is being sought.

AIAI's recommendation number 1 is: At a minimum, the legislation should enable and require the minister to have high-level discussions with First Nations and Canada in order to arrive at a mutually agreeable arrangement for First Nations that includes Canada's involvement in the protection of source water. There should be a set timeline for these discussions, and the minister should be required to pursue contribution arrangements with Canada for this process.

Our rationale for that recommendation:

(a) Ministers of other ministries have often lamented and told us that they would like to discuss issues with First Nations that require attention, but alas, they are limited by their legislation, which already prescribes the law which he or she must follow. It has also been our experience in Ontario that despite the number of court cases stating that governments must negotiate with First Nations, the Ontario government repeatedly refuses to do so. The judge in the injunction case involving Platinex mining and the Kitchenuhmaykoosib Inninuwug First Nation—I won't go through that again; I'll shorten it later on to "KI"—also made note of this behaviour.

Our second rationale:

(b) Under the recently signed Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, there are provisions for including US tribes and First Nations. It was the First Nations and Indian tribes in Ontario, Quebec and the United States that pressed for wording to recognize and include these tribes and First Nations within this agreement, given our unique status. These agreements also contain non-derogation clauses with regard to First Nations' rights. We view Bill 43 as Ontario's fulfillment and implementation of its commitments made under this recently signed agreement. Therefore the honour of the crown must be upheld in

implementing these commitments made with other governments, including the upholding of First Nations' rights. Further, the crown must show due diligence in its implementation agreements, ensuring that, in fact, it will not violate First Nations' rights.

(c) There are Supreme Court of Canada cases that state that governments must consult with First Nations where First Nations have rights or interests. Further, First Nations do not necessarily have to prove the right or interests in order for governments to consult with First Nations. AIAI First Nations assert before this committee that its member nations do have such interests.

(d) As we all know, the events at Ipperwash, Caledonia and Grassy Narrows—in other words, the First Nations' protests—are indicative of the urgent need for Canada and the provinces to forge new relationships with First Nations. Historically, only certain line ministries and departments have dealt exclusively with First Nations and aboriginal issues; however, we strongly suggest that all ministers must be enabled to have relationships with First Nations, and this should be encouraged in this legislation.

(e) As already mentioned, the Minister of Indian Affairs is already looking at a regulatory system to ensure safe drinking water for First Nations, and it is timely for both levels of government to pursue intergovernmental discussions.

Just one quick recommendation, item number two: We strongly urge that a non-derogation clause be included in this bill so as not to derogate, abrogate or extinguish aboriginal and treaty rights. An adequate non-derogation clause, accompanied with recommendation number 2, may better meet everyone's needs, as it demonstrates Ontario's good faith with respect to First Nations and their interests and the intent to deal with them instead of precluding or ignoring them.

We do have more in our presentation. We will be formally submitting it before the deadline.

The Vice-Chair: Thank you, Mrs. Stonefish, for your presentation. Now we have time for questions from Mr. Tabuns.

Mr. Tabuns: Thank you very much for that presentation. Have you had an opportunity to meet with the minister at all to discuss this?

Grand Chief Stonefish: No, I haven't personally had that opportunity yet.

Mr. Tabuns: So you're hopeful that you'll be able to have that meeting in the future?

Grand Chief Stonefish: I'm hoping to. At least, if anything, we will probably still forward our concerns directly to her.

Mr. Tabuns: Okay. The non-derogation clause would be inserted fairly high up in the legislation so it governed all the—

Grand Chief Stonefish: Yes.

Mr. Tabuns: Great.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you, Grand Chief, for coming in. It's an honour to have you here. We appreciate that.

Grand Chief Stonefish: Thank you.

1630

Mr. Wilkinson: First, I just want to say, in regard to chapter 15 and the six recommendations of O'Connor, that our government is committed to that. I'm sure you know that. I just thought we might start with that.

The second thing is, I know the white paper provided for a seat at the table in each watershed. This is a starting point for First Nations, assuming that the First Nations are in a watershed. If you're in a watershed on one of these authorities, there is a seat at the table so that you're involved in the process while we explore—as you've said, we've got that tripartite of the province, the federal government and our First Nations having to make sure that we can have a fuller consultation, taking into account everybody's responsibilities constitutionally. First Nations can contribute, in our opinion, traditional knowledge and a unique perspective while we consult more broadly with First Nations, and we work of course with our conservation authorities and source water planning committees.

I have a summary from the ministry about the consultations to date with First Nations. I'm trying to figure out why you don't fit into this. I'm just going to run through it. When Minister Dombrowsky set up the implementation committee on source protection, there were two people on the advisory committee. The Chiefs of Ontario sat on that committee and, on the technical experts committee on source protection, the Ontario First Nations Technical Services Corp. sat on the committee. There was a round table with First Nations in Thunder Bay in February 2005. On March 3, Minister Broten met with the Chiefs of Ontario to discuss First Nations involvement. In April, she met with First Nations representatives, including Chiefs of Ontario, Metis Nation of Ontario, Ontario Metis Aboriginal Association and the Ontario Federation of Indian Friendship Centres to discuss source protection. On June 9, she met with the Ontario Regional Chief; on November 9, a meeting with representatives from First Nations and, I thought, including the Association of Iroquois and Allied Indians—yours. On November 14, she attended a meeting of the Political Confederacy of regional chiefs in Toronto. There was a meeting with our ministry with Chiefs of Ontario, the Union of Ontario Indians and the Mohawks of Akwesasne. Again, on March 10, the Chiefs of Ontario, and then on July 12 there were three teleconferences. Can you help me, Grand Chief, about where we are catching you in this process?

Grand Chief Stonefish: Yes and no.

Mr. Wilkinson: Can you help me with that? I'm lost.

Grand Chief Stonefish: In terms of the meetings that were held with the Chiefs of Ontario, that's sort of globally and regionally, where there are common issues. However, at the same time, not all of our issues are directly carried forward, because it probably would not be considered, overall, to have some commonalities. Just like any of your municipalities or cities or whatever, each and every one of them is different, so each and every one

of the First Nations in Ontario has its diversity and different way of doing things.

Yes, we are part of the Chiefs of Ontario process, but again, we wanted to come here also to express the association's interest and concerns regarding safe drinking water in our communities.

Mr. Wilkinson: Great. Thank you.

The Vice-Chair: Mr. Barrett?

Mr. Barrett: I thank the association for coming forward. I heard two different messages, whether there was consultation or not. But I think your concern is more future consultation if this law passes. The question I would have, as far as the formal consultation—I know I wasn't invited to any of those meetings. I don't know whether I was invited to any of the other consultations that I've heard about here. But what I do know, as far as public consultation, is that there are five days. I don't know whether five days is enough. You're here today. I don't know whether there will be representatives of other communities at the other hearings this week.

We've been hearing from farmers. It's very difficult for them to come at this time of year. We would hope there would be further meetings in the winter, when people can come out. We would hope that, if this particular bill does become law—and I can't give you a guarantee whether there will be mention of native people in the legislation. Apparently there isn't now. But after that, regulations would be written. I would hope that there would be public meetings—I know there are a lot of side meetings with different groups—to determine whether people's advice is being tapped on all the regulations that usually come along later from legislation. It sounds like there have been meetings to date—

Ms. Wynne: Consultations.

Mr. Barrett: I'm sorry?

Ms. Wynne: Consultations.

Mr. Barrett: I think that's what I'm saying: "meetings," "consultations"; they're pretty well the same word.

I guess my concern is, are your needs not being met? Are you planning some further action to try and draw attention to lack of consultation?

Grand Chief Stonefish: I think two things. Number one is that we do have correspondence that the regional chief did send off to the minister where we were offered \$20,000 for our input on the Clean Water Act. That's just not sufficient to adequately get the input from the four political territorial organizations and some represent-

atives from the independents. The other one is that we also realize that this isn't going to happen overnight, having clean water in our communities. It's going to take some time. This is something that probably should have started maybe two or three generations ago, especially with the agreements for the Great Lakes' water. I think that should be taken into consideration too, because eventually, if you don't start to do something about that now, there's not going to be any water, or we're going to have the water and everybody else is going to want it and we're going to have to fight for it. I don't think that we should be in a position to do that. Again, that's talking about privatizing water, and I don't think that's an area that we need to go in right now.

I think there still needs to be more discussion. First Nations do not have the scientific expertise at this particular moment in time. That's something that we need to look at, and we need to try to access even those types of resources, and you know that's going to cost money.

We're in the same position as the rest of the people who made presentations today, from the farmers to the people living in the cities. We want the same: We want clean, safe drinking water, and we're also concerned about the quantity.

The Vice-Chair: Thank you very much for your presentation. Thank you, Mr. Barrett. Thank you to all the presenters today, and this last presentation. I guess we listened to all the people who came before this committee today.

Interjection.

The Chair: Go ahead.

Mr. Wilkinson: It's a point of clarification, just so that the Grand Chief knows. When the minister was here this morning, she said, "Where First Nation communities wish to participate in the process, we are considering amendments to the legislation that would ensure First Nation drinking water systems can be protected under Bill 43." She said that this morning, just so that you know.

Grand Chief Stonefish: I was here.

The Vice-Chair: Thank you, Mr. Wilkinson.

I also want to thank all the members and the clerk, Hansard, research and all the people who attended this meeting today.

We are going to adjourn until tomorrow at 10 o'clock in Walkerton.

The committee adjourned at 1639.

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Mr. Trevor Day

Staff / Personnel

Mr. David McIver, research officer,
Research and Information Services

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Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Tuesday 22 August 2006

Journal des débats (Hansard)

Mardi 22 août 2006

Standing committee on
social policy

Clean Water Act, 2006

Comité permanent de
la politique sociale

Loi de 2006 sur l'eau saine

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 22 August 2006

Mardi 22 août 2006

The committee met at 1011 at the Victoria Jubilee Hall in Walkerton.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to Walkerton. Before we start, we thought we'd give His Worship the mayor of Walkerton a chance to welcome the committee and to welcome everyone in Walkerton. Go ahead, sir.

Mr. Charlie Bagnato: I just wanted to extend a warm Walkerton welcome and Brockton welcome—we are actually the municipality of Brockton—to ministry officials, assistants, this all-party contingent and all the good people who are taking the time to present today and who have drafted their submissions related to Bill 43, the Clean Water Act.

Water has become a very sensitive issue since May 2000. I am really thankful for the collective efforts of all presenters who come here with good intentions and the common goal of achieving safe, clean, affordable water in Ontario, and I just wanted to thank you all for choosing Walkerton as one of the five sites. We're very honoured to host you today.

The Vice-Chair: Thank you, Your Worship.

We have a very busy schedule today. We have about 26 presenters. Every presenter has 10 minutes to speak and five minutes for questions from the committee. We don't have the 10 to 10:15 presenter. If the presenter for 10:15 is ready now, they can come forward to the stage and give their presentation to the committee.

ONTARIO FARM ANIMAL COUNCIL

The Vice-Chair: Good morning, sir. I don't know if you know the procedure. You have 10 minutes for your presentation and five minutes for the committee to ask you questions. Also, if you don't mind, please state your name for the committee and Hansard. Welcome. You can start when you're ready.

Mr. John Maaskant: Thank you. My name is John Maaskant. I am a farmer from the Clinton area. I represent the Ontario Farm Animal Council, which is an agricultural education organization representing approximately 35,000 Ontario farmers engaged in livestock and poultry. We are a founding member of the Ontario Farm Environmental Coalition and have been involved in the development of a framework for watershed-based source protection planning since it was first proposed by this government in November 2002. I have had the privilege of participating on both the advisory committee on watershed-based planning, which submitted a final report to the Ministry of the Environment in 2003, and the implementation committee on source water protection, which submitted a report to the ministry in November 2004. We appreciate the opportunity to have input into the development of the Clean Water Act, but of course there are still a number of issues that we believe need to be addressed for the legislation to meet its objectives from the perspective of the agricultural community in general and livestock and poultry producers in particular.

I'll make some comments, but I just want to mention that yesterday Ron Bonnett from the OFA introduced the nine points that the environmental coalition has concerns about, but he touched on them briefly. There's not time to deal with them all in depth, but I will deal with several of them in more depth. Other partners in the Ontario Farm Environmental Coalition will expand on these later this week at some of your other hearings.

The other thing I wanted to mention is that we understood that yesterday some participants brought up the precautionary principle. If there's time at the end, I would like to ask staff member Dave Armitage from the environmental coalition to make a few comments on that.

The first of our concerns is with the purpose statement. OFAC believes that the purpose statement in section 1 is too broad. As currently stated, it may be interpreted to mean all water everywhere, instead of focusing on the protection of municipal drinking water supplies. This concern can be effectively addressed by adopting a purpose statement that indicates the objectives of the Clean Water Act. These would include:

- providing for the protection of those water sources that are drawn on to provide drinking water to municipalities currently and in the future;

- secondly, complementing other provincial statutes that, when taken together, provide a multi-barrier approach to protecting the drinking water of Ontario;

—thirdly, establishing a planning mechanism that enables the required level of protection to individual municipal drinking water sources while considering the social, cultural and economic implications of that protection;

—providing a scientifically based framework for decision-making around the use and protection of Ontario's municipal drinking water sources;

—in addition, providing a source of funding for research, education and awareness, and for the installation of beneficial management practices relating to the protection of municipal drinking water sources;

—also, establishing the need for conservation and the efficient use of water to reduce the volumes of water drawn into a municipal water system currently and in the future. We have in our presentation a section on that later. I won't be reaching that one, but you have it in front of you;

—ensuring that new municipal wells or surface water intakes are appropriately sited and maintained to minimize land use restrictions associated with their operation.

A listing of these objectives provides an opportunity to put the Clean Water Act into the context of the multi-barrier approach to safe drinking water as proposed by Justice O'Connor. It also provides an opportunity to show the magnitude of the issue by indicating the need for research, education and awareness, water conservation and efficiency, and the proper siting and maintenance of wells.

The second issue is definitions. Section 2 of Bill 43 contains several definitions that are intended to clarify the meaning of several words found within the text of the bill. The Ontario Farm Animal Council has several concerns with this section. Specifically, we believe that the words "threat," "hazard," "pathway," "exposure," and "risk" need to be defined. These words were used very effectively by the technical expert committee to describe the process to be used to determine whether or not a land use that poses a threat actually constitutes a risk. The technical expert committee described "risk" as a mathematical function using the following equation: risk equals hazard plus pathway plus exposure, where each is expressed as a probability.

Currently, the Clean Water Act defines "risk assessment" and "risk management plan" but not the word "risk" itself. The term "drinking water threat" is defined, but in the definition of that term, reference is made to "adverse effect" without defining what constitutes an adverse effect. We believe that the basic premise behind Bill 43 is to prevent adverse effects on a municipal drinking water source, but it's absolutely essential to clearly indicate at what point an effect on drinking water becomes adverse. These terms are defined in the science-based framework submitted by the technical expert committee in November 2004.

Ideally the Clean Water Act will establish, through definitions, that a threat can be managed to reduce the hazard, and therefore the risk. For example, fuel stored on a farm poses a threat in that fuel has the potential to contaminate a source if direct contact is made at suffi-

cient volumes. However, fuel stored in a double-walled tank with protective posts and secondary containment presents a very low hazard and virtually eliminates the pathways. Consequently, the actual risk of stored fuel contaminating a water source is low, despite the fact that fuel will be considered a threat. There's no point in adopting a risk management approach without acknowledging that risk can be managed.

1020

Compensation is our third concern. Subsection 88(6) suggests that the provincial government is unwilling to provide compensation for the imposition of land use restrictions that could adversely impact the profitability of a farm operation by stating that "nothing done or not done in accordance with this act ... constitutes an expropriation or injurious affection." This section conflicts with section 83, which provides for an appropriate means of compensating a landowner for relinquishing control of their land through purchase, lease or otherwise for public use. We recommend that subsection 88(6) be removed from Bill 43.

The dilemma of compensating farmers for opportunity costs associated with land use restrictions imposed by the Clean Water Act is best addressed by requiring municipalities to gain control of the wellhead protection areas and the intake protection zones associated with their wells and surface water systems. Acquiring control of the property can be either through purchase or lease arrangements.

If a lease arrangement is entered into between the municipality and the farmer, the cost of the lease to the municipality could be negotiated. Clearly the cost of the lease to a municipality would be directly related to the restrictions placed on the land. This approach ensures that farmers are appropriately compensated for land use restrictions imposed on their farms and ensures that municipalities have control of the land required to protect the well.

OFAC also has concerns that Bill 43 is silent on the subject of providing funding assistance to farmers for the adoption of beneficial management systems. This contradicts advice provided by Justice O'Connor. More generally, there should also be public funding for research, education and awareness initiatives relating to the objectives of the Clean Water Act.

An excellent model is the stewardship fund that is embedded in Manitoba's Water Protection Act. Interestingly, Manitoba's stewardship fund is in the form of a trust. The establishment of such a mechanism will demonstrate a commitment by the government of Ontario to the level of funding necessary to ensure that the Clean Water Act meets its objective of producing a more secure source of drinking water to its various municipalities. We recommend that a section be added to Bill 43 that outlines the mechanism whereby a province can provide funding to support the objectives of the Clean Water Act.

Am I finished?

The Vice-Chair: You have 30 seconds.

Mr. Maaskant: I have 30 seconds. Okay. I wanted to mention biosecurity and acknowledge that we understood

the minister did say yesterday that this will be dealt with, and we have a section here to deal with that, which I don't have time to go through. But it is a big concern for us, and we wanted to draw your attention to it.

In conclusion, we recognize the importance of safe drinking water. We would like to see some changes. We think it's the right objective. We want to make sure that we can do our part to help provide safe drinking water, but we don't want to have to pay the whole bill.

Thank you very much for your time and attention. I'll try to answer your questions, and if time permits, I'll ask Dave to comment on the precautionary principle.

The Vice-Chair: Thank you very much for your presentation. Now we'll open the floor for questions. We'll start with Mr. Murdoch.

Mr. Bill Murdoch (Bruce-Grey-Owen Sound): Thank you, and I welcome the committee to the great riding of Bruce-Grey-Owen Sound. We're certainly pleased to have you here, and you also to present. I noted with interest your comments on cost. No one here would not want clean water. The objective is good, but who's going to pay for it? Maybe you can elaborate again. We can't expect the farming community to pay the whole cost for the clean water system for everybody else in the cities. We have a concern about that in this riding—it's one of my big concerns—and the biosecurity. You didn't get a chance to talk about that, but maybe I'll give you a chance in my few minutes to say some more about that.

Mr. Maaskant: Okay. On the funding, of course, very simply, above and beyond normal, responsible activity, any further activities that are necessary to protect drinking water really, we feel, should be borne by the public, and there should be a trust that helps not only to fund the implementation but also the maintenance. Also, to help the source protection committee and working groups to do their job, there needs to be some funding for that. That could all be out of this trust.

The Vice-Chair: Mr. Tabuns.

Mr. Peter Tabuns (Toronto-Danforth): Thanks for the presentation today. Have you had a chance to talk to farmers in Manitoba to get a sense of how that water stewardship fund has worked for them? Has it actually addressed the problems that you're concerned about here in Ontario?

Mr. Maaskant: Some of our staff have, but I personally haven't, so it's very difficult for me to comment. But I could ask Dave if he could comment.

Mr. David Armitage: The legislation in Manitoba is also very new, so it hasn't been fully implemented. To be honest, the provincial contribution to that fund at this point is very small. I think it's in the neighbourhood of \$300,000. So it wouldn't do a great deal. But I think it's more the principle that the provincial government in Manitoba elected to put that mechanism in place that sends a strong message. But it hasn't been particularly operational to this point.

The Vice-Chair: Do you mind, sir, stating your name for Hansard?

Mr. Armitage: I'm sorry. My name is David Armitage.

The Vice-Chair: Thank you. The parliamentary assistant, Mr. Wilkinson.

Mr. John Wilkinson (Perth-Middlesex): To John and Dave, and just for the record, OFAC and OFEC have done a wonderful job of helping our ministry over the last few years, and we appreciate that.

To my friend Mr. Murdoch's point, yesterday the minister stated in her opening remarks that there will be changes to make sure that biosecurity is part of the protocol for anyone who would end up having to go on-farm, and that they're aware of that.

My question on this one about care and control—I see the point. What would prevent, under that scenario, a farmer deciding that, because a municipality really needed to get control of that land or they might have to spend a substantial amount of money to change the location of the well, they could end up another way, saying, "I want millions and millions of dollars for these two acres." So what control would have to be put on to make sure that you would get what you've said, which is that you just want to have like compensation for loss of economic production from that land? Could you just give me some insight into that as we look at this?

Mr. Maaskant: I guess my assumption is, and I should ask Dave to make sure that I'm accurate, that it's like expropriation. I believe there are safeguards built in to that process too, so it would be the same type of process.

Mr. Wilkinson: So, in your opinion, there would have to be a balance between the two interests of the farm and the municipality representing the people who are drinking the water. So it would be some type of a balance there.

Mr. Maaskant: Exactly.

Mr. Wilkinson: Recommendation 16 by the justice was specific that it should be OMAFRA to take the lead on compensation, supported by the Ministry of the Environment. When I asked Ron Bonnett about that yesterday, he said no, it should be the MOE. That's not what Justice O'Connor was saying. So I just wonder if you have any kind of clarity about that. MOE is not really a funding ministry, it's a regulatory ministry, where OMAFRA is typically what farmers deal with. OMAFRA knows who a farmer is. We don't get into that, who's covered. I just want your comment on that.

Mr. Maaskant: Of course, I guess right off the bat, my comment would be that OMAFRA couldn't possibly fund this without a huge increase in its budget. So that would be the first issue to deal with. But whoever administers the funding of all the different aspects of it, especially the implementation on farms, really, we feel it needs to be a type of trust so that, because it's a provincial and a Ministry of the Environment initiative, there's some type of stewardship trust that deals with it specifically for this purpose.

The Vice-Chair: Thank you, sir, for your presentation.

ASSOCIATION OF SUPERVISORS
OF PUBLIC HEALTH
INSPECTORS OF ONTARIO

The Vice-Chair: Now we have with us the Association of Supervisors of Public Health Inspectors of Ontario. Sir, you can start whenever you're ready. You have 10 minutes to speak and five minutes for questions.

Mr. Klaus Seeger: Thank you, Mr. Chairman. Good morning, ladies and gentlemen. Thank you for the opportunity to provide input on the Clean Water Act. My name is Klaus Seeger, and accompanying me is Lou D'Alessandro. We will share the time allowed for this deputation. We are here on behalf of the Association of Supervisors of Public Health Inspectors of Ontario, also referred to as ASPHIO. We will be using the acronym ASPHIO when referring to this association. I also work for Oxford County Public Health and Emergency Services, and Lou is with the Grey-Bruce Health Unit. Lou also sits on the board of directors of the Walkerton Clean Water Centre. We are both members of the ASPHIO safe water working group.

ASPHIO has members in public health unit management teams in all areas of Ontario. Our comments are supported by the Association of Local Public Health Agencies, which also made a deputation to this committee yesterday in Toronto, and by the Ontario Public Health Association.

It is very timely for this committee to hold one of the hearing meetings in Walkerton. We certainly support and encourage the Legislature to pass Bill 43. Even though there is a tremendous amount of work ahead to implement the contents of this act, it will help in protecting existing and future sources of drinking water in Ontario. We wish to emphasize the importance of the implementation of this type of legislation. Despite the fact that Justice O'Connor recommended it, this legislation will show that when implemented, future generations will thank the governments of the day for putting a process in place that helps to minimize the risk to public health and the environment from human activities that can cause potential contamination events.

ASPHIO offers the following comments for the committee's consideration that illustrate potential implications for public health units and need to be addressed before Bill 43 receives royal assent. Lou and I will alternate on the following points and refer to the numbered sections. I guess I have the first one.

Need for reporting to the medical officer of health:

(1) If the person who has authority to enter a property becomes aware of an imminent drinking water health hazard, the Clean Water Act will require that the MOE be notified. However, there is no requirement to notify the local medical officer of health. It seems only logical that action to warn and protect public health should be initiated as soon as possible, and notifying the local medical officer of health would hasten this process. The

requirement to notify the MOH should be in the legislation. In fact, lines of communication and reporting need to be entrenched within the act and accompanying regulations. This oversight needs to be corrected in the act.

Mr. Lou D'Alessandro: Another major area of concern is the financial support.

(2) A high priority of the province should be to provide the necessary funding prior to any implementation of the programs and requirements of any regulations developed under the Clean Water Act, 2006. In addition, the cost of this act should not be on the backs of rural residents. All citizens of Ontario enjoy clean drinking water and need to contribute to the cost of protecting and maintaining their supply. Those who produce potential contaminants may need to pay a surcharge, a permit fee, but this can be reduced when a plan is developed for that property and it is maintained to prevent contamination.

Mr. Seeger: Roles and responsibilities:

(3) The whole question of clarification of mandates and specific roles is of the utmost importance in a source water protection framework and implies the need for additional consultation. One example is that most public health units wish to be represented on source protection committees. However, in situations where the region covers more than one public health unit, a mutual process will be needed to determine which public health unit takes the lead and how information on various issues will be communicated. In addition, some public health units will have the resources to actively participate, while others simply do not have any such resources. Options for degrees of participation need to be developed.

Mr. D'Alessandro: Another area of concern is information sharing, under section 13.

(4) Information that is shared on details of source protection plans and risk assessment reports will be useful to the local public health unit, but protocols on getting timely access to information still need to be developed. A prime example is public health unit access to the Ministry of the Environment's private water well record database. We need to have timely sharing of this without cost. In addition, the daily information public health units receive on private well water results may be useful in the preparation of a risk assessment report, but a process, a protocol on allowing this information to be shared has to be developed. Legislation or other legal instruments will be needed to ensure that the information is readily accessible but without discouraging private well owners from taking future water samples for analysis via the health unit.

Mr. Seeger: Respecting part IV enforcement sections:

(5) Part IV of the act deals with the regulation of significant drinking water threats that have been designated in the plan to be subject to the provision of this part of the act. The responsibility for enforcing part IV is given to the municipality, which, in turn, has authority to make bylaws under the Municipal Act for the production, treatment and storage of water. This

enforcement role may be delegated by the municipality to other specific public bodies by agreement, such as boards of health and conservation authorities.

There is no need to create a whole new bureaucracy to administer this legislation. Existing organizations should be utilized, albeit with enhanced funding. The body responsible for enforcing part IV must appoint the permit official, also known as a risk management official, to administer the provisions of this part of the act. While public health units could complete the requirements of the enforcement sections, there are inherent funding and human resources implications that would need to be addressed should they be delegated. If the public health unit does not have a relationship with the upper-tier municipality in its jurisdiction, a separate delegation and subsequent agreement would need to be made with each lower-tier municipality that is interested. This may become difficult where a watershed has numerous municipalities and not all wish to delegate authority to the public health unit. It cannot be emphasized enough that without sufficient funding, public health units would not be able to enter into an agreement should the municipality wish to delegate the authority of enforcement to public health.

Mr. D'Alessandro: (6) It is our understanding that the skill set and criteria for the requirements of the risk management official or the permit official would be more clearly defined by the Ministry of the Environment and may become part of the regulations that are developed. Whatever the qualifications are, it is extremely important to provide in-depth training opportunities to ensure that all RMOs start with a level playing field regardless of whether they are based with a conservation authority, a municipality or a public health unit. Public health inspectors, conservation officers and others may have the foundation qualifications to be eligible for RMO training. Public health inspectors have the basic skill set to meet the requirements of an RMO.

Mr. Seeger: Regarding private services in septic system re-inspection:

(7) We believe that the proper disposal of sewage is in the interest of public health and goes hand in hand with the protection of water supplies, private or otherwise. Therefore, some public health units still commit considerable resources to administering this program under the Ontario Building Code Act. Amendments are proposed to authorize the establishment by regulation of maintenance inspection programs for septic systems. This will have additional funding and human resources implications for those public health units currently enforcing part VIII under the Building Code Act. It needs a lot more discussion.

Some public health units and other principal authorities that administer the sewage system programs in their area will have an extreme challenge in finding adequate human and financial resources to provide the re-inspection of septic systems. This cannot be emphasized enough. Even though ASPHIO may support the concept of the maintenance proposal, the costs in providing the

service may force some public health units out of the current Ontario Building Code part VIII program. In addition, if agreements to do so are not in place with each municipality in a source protection area, problems with consistency from municipality to municipality and source protection area to source protection area may become a problem.

With respect to funding of the re-inspection program, a user-pay type system, that is, for those property owners on septic systems, could be established via property taxes. A small surcharge for each property would likely fund the entire program in any municipality. The funding created should also provide grants for upgrades identified in a risk assessment plan for any property, such as a farm, an industry, commercial entity or a private residence. This would prevent chasing fees for those who try to avoid payment.

Mr. D'Alessandro: (8) It's also recommended that when there is a transfer of property involving private services such as wells and septic systems, the Clean Water Act should require the disclosure of well water potability and a properly operating septic system. This would allow for a septic re-inspection process to occur and a review of the history of water sampling of the well. Often new purchasers do not know where the existing well and septic system are located or the age of either service. Many owners do not sample their well supply during different seasons in any given year, even though public health units strongly recommend and market this type of practice. If proof of seasonal water analysis is needed for the transaction, more sampling would occur and a purchaser should then have access to this information from the owner. Various amendments to applicable legislation would be needed to complement the Clean Water Act. Such disclosure will provide valuable information on the risk that may be inherent to the aquifer and allow for a plan to be implemented to prevent contamination while at the same time upgrading existing systems.

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Mr. Seeger: Number nine—

The Vice-Chair: Sorry. I guess your time expired.

Mr. D'Alessandro: Oh, really?

The Vice-Chair: Now we have five minutes for questions. We'll start with Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming in and making this presentation. One of the issues that has come up from a number of environmental and health groups is incorporating the precautionary principle right into the stated terms of reference for this act. What would be the position of your organization on that, and what do you think its importance would be in this act?

Mr. Seeger: I would certainly agree with that. I think in public health that's kind of a foundation of how we operate. We believe in prevention, and I think the intent is to allow development activities to occur, but with an understanding of what the potential implications are and what steps are being made to prevent any negative things happening.

Mr. D'Alessandro: Further to that, the precautionary principle should have a common definition amongst different ministries, because we all may take a different approach to what that precautionary principle may mean. So to sit down and work out the actual definition of "precautionary principle" under the Clean Water Act, I think, is where it should all head. We all have a different look at what one definition may be.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in. It's a detailed presentation. Be assured that the ministry and the minister will be reviewing this.

We had a question yesterday about the appropriate role of the medical officers of health, whether they should be on the source water planning committee by legislation or whether they should be ex officio, because we do have areas where we have, like, five headwaters in the same county. I'm thinking of my own county of Perth. But there are a lot of different medical officers of health along that watershed, let alone through the aquifer, so the question is whether or not we should go with the ex officio way. That makes sure that the public, the medical officer of health and, obviously, his or her inspectors are at that table providing that expert advice and that they're entitled to be there, but they're not taking up a space for another stakeholder, because obviously a lot of stakeholders in a watershed are going to want to be represented. Do you have an opinion as to what's the best way to get public health into the committee process?

Mr. D'Alessandro: The way I would look at it is, we're here representing ASPHIO. ASPHIO is broken up into six different regions across the province, so we have very strong communication amongst the health units. We meet monthly. So I think that when you look at the process of public health being represented in a certain area, leave it up to us. We can have representation there that will satisfy all health units that are involved.

I understand what you're saying about a stakeholder being at the table if we put the medical officer of health as ex officio, but the same time, we don't want to lose anything on the power base at and voting at the table.

The Vice-Chair: Ms. Scott.

Ms. Laurie Scott (Haliburton-Victoria-Brock): Thank you very much for your presentation. I ask you to put forward amendments to the committee, if you could, before we do clause-by-clause. And you're absolutely right: You do play a key role and should be involved in whichever way is recommended. Maybe when you do amendments, you could consult and make the recommendations.

You talked about financing, and I know the minister, yesterday, thought that the implementation costs would be reasonable for municipalities to pay for this bill that's being brought forward. Do you have a comment on that? You touched briefly on the cost to municipalities, but do you think that it's going to be a large undertaking by municipalities, there's going to be a lot of costs involved? Should they bear the burden?

Mr. D'Alessandro: The best way I can answer that is, the Grey-Bruce Health Unit actually runs a very model

program on septic re-inspection currently. There is a fee attached to the property owner, and it's working very well in that regard. But I think it has to be a combination of a number of things once the total plan is looked at, and that could be part of it.

Ms. Scott: So provincial funding.

Mr. D'Alessandro: Yes.

The Vice-Chair: Thank you for your presentation. Thank you very much.

CONSERVATION ONTARIO

The Vice-Chair: The next presentation will be by Conservation Ontario, if they could come forward to the stage, please.

Good morning. Welcome. You can start whenever you are ready. Before you start, please state your name for Hansard.

Mr. Richard Hibma: Good morning. My name is Richard Hibma. I'm the chair of Conservation Ontario.

Our organization represents Ontario's 36 conservation authorities across the province, who share a mandate to protect Ontario's water. Conservation Ontario strongly supports the proposed Clean Water Act. We believe firmly that there are very strong economic, public health and environmental benefits to ensuring clean and plentiful supplies of drinking water. I might add, the last time that I stood in this place was at the inquiry, which was part of the aftermath of failing to do that very thing.

The comments in our written submission are supported by proposed amendments to the legislation that we believe will strengthen the act and ensure that it is able to do what is intended. The one-page handout in front of you highlights Conservation Ontario's four key issues.

The first one is an integrated approach to water management in Ontario. We feel very strongly that that is the first key; that is, the need for that integrated approach.

Water management in Ontario today is highly fragmented and administratively complex. The Ministries of the Environment and Natural Resources are the key government decision-makers involved in water quality and quantity. A large number of other ministries and agencies are also currently responsible for various aspects of water management. The absence of an integrated policy framework and the fragmentation of responsibilities have led to uncertainty about roles and responsibilities and, what is most troublesome, inconsistent planning and implementation.

Integrated water resource management is best achieved through development of a comprehensive provincial water management strategy, and certainly Justice O'Connor, as well as the technical experts committee and the source protection implementation committee, all recognized and recommended the need for such an integrated approach. Other provinces have also recognized this need and have developed, or are working towards, integrated water policies.

In the absence of such strategy, it's essential that the Clean Water Act and regulations clarify the relationship

between source protection planning and the broader watershed management.

Conservation Ontario is recommending that a principles section be added to the Clean Water Act to address the need for an integrated approach, as well as to recognize the linkages between source water protection and other water management programs. We also recommend amendments to section 13 and section 19 of the act to ensure the assessment report and source protection plan recognize other water management issues and programs within the watershed.

The second key issue is addressing the non-municipal drinking water supplies. Another significant issue is the need to ensure adequate protection of all water supplies across the province, including non-municipal.

There are nearly three million Ontario residents who rely on non-municipal drinking water supplies, wells and surface water intakes. They are not currently covered adequately in this act as it's presented. Sections within the act do give municipalities the ability to require the inclusion of any existing or planned drinking water systems, but again, this will only protect a small minority of non-municipal drinking water users.

We are not recommending additional regulatory measures. However, there are a number of other tools that can effectively protect non-municipal water sources. Specific reference for inclusion of non-municipal water supplies in the terms of reference in the assessment reports and the source protection plans section of the act is essential. Source protection plans should also include specific references to ensure optimum management of non-municipal wells and surface water intakes.

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The third issue is the need for a complete spectrum of implementation tools. We know from experience that regulatory instruments are not suited to all situations. They should be seen as a last resort only, when compliance is absolutely critical and other options have been unsuccessful. If source water protection is to be a consensus-based process, a full range of implementation tools is required, with particular emphasis on voluntary and incentive-based options.

The instruments prescribed under the proposed Clean Water Act should be seen as only one available implementation tool. Non-regulatory tools include such activities as education programs, stewardship incentives and research. In fact, we have lots of history of implementing that very type of thing with partner organizations.

To address this issue, Conservation Ontario recommends that a principles section be added to the Clean Water Act, recognizing the spectrum of tools available to bodies subject to the act in developing source protection plans. In addition, source protection plans should be required to address both the regulatory instruments and the non-regulatory tools that may be used to protect drinking water supplies.

Our final key issue: Long-term, sustainable funding is critical to the success of this act. There is a need for long-term, sustainable funding for source water protection to

support the watershed stakeholders in the implementation of the plans that are developed. This is particularly important with respect to funding for municipalities and rural landowners in undertaking their responsibilities for source protection plan implementation. You've heard these comments before from other quarters.

While the Sustainable Water and Sewage Systems Act and the proposed Clean Water Act provide some tools for source water protection cost recovery for municipalities, mechanisms are not currently in place for implementation using the non-regulatory tools, such as education and incentive-based programs. In many regions of the province, municipalities, local agencies and landowners all have limited capacity to take on additional responsibility without access to additional resources. You'll hear that refrain from AMO, as well as the farm organizations and ourselves.

A stewardship fund administered by the appropriate provincial agency is recommended for implementation of non-regulatory tools, including research, public education, and outreach and incentive-based programs. Similar models have been used in Manitoba and Quebec in the implementation of watershed-based programs, and such a model is consistent with recommendations of the source protection implementation committee.

My closing remarks would be that Conservation Ontario wishes to thank the standing committee for the opportunity to submit comments on the proposed Clean Water Act. As conservation authorities across the province, we look forward to continued progress towards drinking water source protection in Ontario and our role in its development and implementation. Conservation Authorities are committed to ensuring successful implementation of source water protection to achieve this goal. We look forward to continued partnerships toward this end with the provincial government and with all of the partner agencies that we historically have worked with, and we'll continue to expand that partnership base. Thank you.

The Vice-Chair: Thank you, Mr. Chairman. Parliamentary assistant?

Mr. Wilkinson: On behalf of all of us, thanks to Conservation Ontario and all of your authorities for the work that you've been doing. I don't think any of this could be contemplated if we didn't have the wonderful resource that your membership represents to this province. We know that conservation authorities have taken the unique role that's been given to them by Justice O'Connor very seriously.

I just wonder, because of the funding that is being flowed from the province to conservation authorities, how are we doing, overall, about getting the science? This is all going to be based on people agreeing on the science. Since you're here, could you just give an update of how we're doing across the province with that provincial money in preparation for this bill?

Mr. Hibma: I can take a stab at that, and if I go too far astray, Charley will slap me.

We have been using that money. We're not at the point right now of having source water protection com-

mittees, so the money that has been flowed to the conservation authorities has been used to develop the science, doing groundwater studies, doing the mapping, watershed budgets and all of the information gathering to enable us to base the decisions that will become part of the source water protection plan on sound science. To this point, there have been enormous gaps in our knowledge base. You can't make solid decisions on limited information. So there has been an awful lot of work done with that funding to gather the required information.

Mr. Wilkinson: Do you feel that you'll be ready to go when the source planning committees are struck?

Mr. Hibma: Certainly. In some areas of the province, we are well down the road; in other areas, we may lag behind, but we're working very effectively at closing those gaps. By the time this legislation is prepared for us to have the source protection committees in place, we will be ready.

The Vice-Chair: Mr. Barrett.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you for the presentation on behalf of the conservation authorities. It's interesting: Conservation authorities are probably the only jurisdictions in North America based on watersheds. I know that in the Tennessee Valley there's a bit of a structure there. You point out that there are three million water users ignored by this legislation: those of us who use our own wells.

Going back to the funding issue—I know that the parliamentary assistant raised this—the question I have is: The way the legislation is structured, and we know there's no mention of funding in the legislation, is it fair? Is there an equitable process for all players, all people in Ontario, to contribute to source water protection? Yesterday the city of Toronto testified. It's fairly simple for the municipalities. I think maybe 80% of the people in Ontario get their water just by putting a pipe into the Great Lakes. Many of these cities—Windsor, Toronto—don't have concerns with source water protection within their own jurisdiction. They don't have cattle in streams, for example. They don't have to deal with this.

The question is, how do we set up an equitable system where all people foot the bill? I know that yesterday the parliamentary assistant raised this issue of a \$7-billion cost. I'm not sure where that's coming from. But I guess the question is, how do we make this fair, no matter what the cost is, no matter what we hear from the parliamentary assistant? How do we make sure this is fair and equitable, because those municipalities or homeowners that just put a pipe into one of the Great Lakes don't have to deal with the broader source water protection, even though this legislation ignores it and the Great Lakes are affected by where the source water comes from?

Mr. Hibma: It is a valid question that we struggle with, and not just on source water protection and the implementation therefor. As conservation authorities, we represent a wide range, from those that are largely urban-based to those that are very limited populations and essentially rural, and that same issue presents itself. But clearly from my perspective, and I believe from that of

all of Conservation Ontario and all authorities, the larger the pot that the income distribution comes from, the more equitable that source of funding may be. If you have a small rural area with limited assessment, limited population, there is no way that any of this is affordable. It has to be a higher-level government funding source or it's never going to be equitable and achievable.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation today. I note in your presentation here you say that in order to undertake your responsibilities under the act, you will need funding. So am I to understand that without funding you will not fully be able to carry out your responsibilities as set out here?

Mr. Hibma: That particular question speaks to the implementation.

Mr. Tabuns: Yes, that's correct.

Mr. Hibma: The funding that is provided at this point in time enables us to carry out our role. Going beyond the current role, in the development of the plans, the implementation and monitoring and all of that, is not currently achievable within conservation authority funding envelopes without significant impact on whoever is going to pay, whether it's the individual taxpayer through municipal levies, through a fee recovery mechanism or a provincial pot of money. It's not achievable without some additional source of revenue.

The Vice-Chair: Thank you for your presentation.

1100

The Vice-Chair: The next presentation will be by the Saugeen Valley Conservation Authority. They may come forward if they are here.

Interjection.

The Vice-Chair: Is it a point of order?

Mr. Wilkinson: No, just a research question while we're waiting for our next deputant. I'd just say to our researcher, if you look at second reading debate on May 3, I think, page 3552, you'll see our colleague Mr. Yakabuski mentioning that he felt he had information from farm groups, though he didn't state which ones, that the cost of this would be \$7 billion. That's what I'm referencing: your colleague's statement. I would ask research if they could contact Mr. Yakabuski and if he could provide for the committee, as an honourable member, the background information upon which he made that statement in the House. That would really help inform the committee about where Mr. Yakabuski's \$7-billion number came from. If he could get back to our committee, we'd appreciate that.

Mr. Murdoch: I can straighten that out right now. He doesn't need to get it. That was mine. That's when we were in government.

Mr. Wilkinson: But you're not the farm group, Bill.

The Vice-Chair: Just a second, sir.

Mr. Wilkinson: It's a farm group; I'm just quoting from Hansard.

Mr. Murdoch: Well, I'm a farm group; I farm.

Interjection: He is a farm group.

Mr. Murdoch: Yes. There you are.

Mr. Wilkinson: Oh, you're going to table it for us.

Mr. Murdoch: Sure.

The Vice-Chair: Sir, when you get a chance to speak, you may state your opinion and whatever you want.

SAUGEEN VALLEY CONSERVATION AUTHORITY

The Vice-Chair: Right now we have with us the Saugeen Valley Conservation Authority. You may start when you're ready. The members are ready now.

Mr. Doug Freiburger: Welcome to Walkerton and the Saugeen River watershed. My name is Doug Freiburger and I am chair of the Saugeen Valley Conservation Authority. I am pleased to present the following comments to aid in the review of Bill 43, the proposed Clean Water Act. You have just heard from my colleague Dick Hibma at Conservation Ontario. I strongly endorse the constructive comments of Conservation Ontario and would like to provide a local perspective on source water protection. The key areas that I will be addressing are plan development, implementation tools, funding and non-municipal drinking water supplies.

Saugeen Conservation has partnered over the last two years with the Grey Sauble Conservation Authority and the municipality of Northern Bruce Peninsula to gather technical information about our watersheds. In our consultations, people wanted to know who would be putting together source protection plans. Overwhelmingly, municipal politicians, stakeholders and the public want to have as much opportunity for input as possible. They want decisions to be made locally and are keen to be part of this process. The multi-stakeholder committee described by the proposed Clean Water Act is a good step. It would be advantageous to have these committees in place as soon as possible to generate community interest and open dialogue between groups.

Conservation authorities are well suited to their role in facilitating development of the plan. Saugeen Conservation is a local watershed management agency that has worked for more than half a century to protect and manage water and other renewable natural resources. Conservation authorities have, since the 1970s, been implementing fill regulations, which recently became development, interference with wetlands and alterations to shorelines and watercourses regulations. One thing we have learned is that non-regulatory methods play a significant role in achieving good outcomes when used in conjunction with regulations. Through education and discussion with staff, many property owners willingly revise their development proposals to the less sensitive parts of their property and opt for lower-impact designs.

In the proposed Bill 43, a great deal of emphasis is placed upon a permit process to deal with risks. Source protection plans should contain a range of implementation tools that include education, research, stewardship and incentive programs, in addition to prohibitions and permits. Knowing that these options exist will create a

more favourable attitude in the community around the planning and implementation of source protection.

Extension services improve water quality while increasing yields for landowners and conserving habitat. Best management practices should be promoted. The fencing of cattle from watercourses, improved chemical storage and manure handling procedures are excellent examples that were offered through previous programs such as CURB and Healthy Futures. More than 1,200 water quality improvement projects were undertaken in this region through CURB and Healthy Futures. These types of extension services have been offered in this jurisdiction as well as others on a cost sharing basis that recognizes that there is benefit to the landowner as well as to society in general. Additional clauses should be placed in the act to encourage actions and results beyond the permit process. Conservation authorities have great success in co-operating with landowners with soft solutions as opposed to hard regulatory tools.

At every municipal council and CA board meeting attended by our source water protection staff in this region, the question has always been asked, "Who will pay for source water protection?" To date, funding has been received to initiate technical work, and staff are working with municipal partners on assessment of more than 40 drinking water systems. The proposed act does not, however, contain a provision for fully funding the completion of the source protection plans.

In the same regard, there are serious concerns about the costs to implement the source protection plans. Section 40 calls for monitoring programs and section 41 requires annual progress reports to be done by source protection authorities, and yet there is no indication of how these will be funded.

Aside from recouping the costs of the permit process through fees, there is a lack of funding mechanisms for implementing source water protection initiatives. Our present partnership arrangement for source protection work covers over 8,000 square kilometres but has a population of only 160,000. The financial burden of planning and implementation would be too great for these small communities. Conservation authorities and municipalities are looking for assurances that no development or implementation costs will be downloaded to the local community. We must know how we are going to pay for implementation before we get to that stage. The role of the provincial government as a financial participant must be clearly defined.

The province can look to other legislation for examples of clauses that refer to funding of required activities. The Conservation Authorities Act allows the minister to provide grants. Under the Crown Forest Sustainability Act, resource users may be directed to pay into a fund for management of forest resources. As well, the Aggregate Resources Act requires contribution to a fund for rehabilitation. A similar type of fund for source water protection would offer one option for funding implementation.

The act places emphasis on municipal drinking water systems which serve the majority of Ontarians. On these

systems, technical studies, infrastructure upgrades, regulations and source water protection will combine to form the multi-barrier approach identified by Justice O'Connor.

Conservation Ontario in their submission expressed concern for the nearly three million Ontarians who depend on non-municipal supplies for their drinking water. Overall, in the Saugeen, Grey-Sauble, Northern Bruce Peninsula area, about 40% of the population relies on non-municipal water systems. In Northern Bruce Peninsula, there is only the one water plant in Lion's Head. The other 75% of the population, as well as hundreds of seasonal cottagers, use non-municipal water systems. There are rural schools, for example, in Chepstow, Formosa, Tobermory and Kilsyth, which rely on their own drinking water systems.

It should also be noted that there are nursing homes, seniors' residences, institutions, medical facilities and commercial establishments in our area and throughout rural Ontario where the public uses non-municipal drinking water sources. How will source protection benefit these areas? A rural landowner adjacent to a municipal wellhead may need to make adjustments to help protect the municipal source of water, but the proposed Clean Water Act does not afford the same protection to that rural landowner's source of drinking water.

The Clean Water Act should be about protecting and managing the water for all Ontarians and not just those who have municipal treatment and distribution systems. Within the proposed act, subsection 8(3) appears to make provision for a municipality, by resolution, to require specific water systems to be included in the terms of reference for the assessment report.

What if this section was applied to a community such as Keady, located at crossroads 40 kilometres northeast of Walkerton? The municipality boundary runs along the hamlet's main road, and an arena and 15 homes are on the south side in the township of Chatsworth. On the north side in the municipality of Georgian Bluffs are five houses, a church, a couple of businesses, a trailer park with 45 residents, and the Keady market and livestock auction, which attracts up to several thousand people to its Tuesday market. Dozens of wells have been drilled to provide for individual water systems, creating what would be termed as a well field. A cursory examination would suggest that this situation needs further study to determine if there are any water quality and quantity issues or threats.

It is quite conceivable, under the proposed subsection 8(3) that one municipality would call for its part of the hamlet to be studied and the other would not. It's not reasonable for just a portion of the community to benefit from source protection.

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Furthermore, subsection 8(4) requires a municipal resolution to list every well intake. This stipulation could be very problematic to achieve, given incomplete or inaccurate well records and the absence of records in the case of dug wells, sand points, surface pipes and shore

wells. A more feasible approach would be to define a boundary around the parcel, hamlet, village or geographic area that should be studied and investigate all drinking water supplies found within that area.

A more comprehensive method, and one that would extend source water protection to all our watershed residents, would be to include the entire source protection area under the terms of reference. Through scientific study, those parts of the region where threats to drinking water sources exist could be identified and appropriate solutions could be included in the source protection plan.

In conclusion, water is vital to our health, society and the economy. We all share in the benefits when good water quality and quantity are available. It is reasonable, therefore, to believe that everyone in the province must share the responsibility for protecting drinking water sources. Likewise, it is reasonable, therefore, to believe that if there is not equal protection for everyone's water in the province, there is an inequity in the act.

Let it also be noted that the protection of this province's water should be the financial responsibility of the province and not become a burden to the residents of this fine province at the municipal level.

We thank the committee for taking the time to come out to communities to hear from groups and individuals, and in particular for visiting Walkerton. As well, we look forward to the important work ahead for source protection planning.

The Vice-Chair: Thank you for your presentation. You had exact timing.

Now we have a question from Mr. Murdoch.

Mr. Murdoch: Thanks for coming. We certainly appreciate your comments today. I like to hear you say, "Who's going to pay for this?" because this seems to be a big problem. No one's against clean water and, then, of course, every time you get a little negative on this, the government says, "Oh, you don't like clean water." Everybody wants clean water, but who's going to pay for it? That's what you said. As you know, a lot of your money comes from municipalities, and they don't have a lot of money now. After we've had three years of mismanagement by the present-day government, they're pretty well broke. I know that as conservation authorities you have trouble coming up with or getting money from the municipalities—they don't have it—and a lot of the time, that's a problem.

The government over there wanted to know where the \$7-billion figure—that's probably low; that's a low figure. They want to push this through without any concern about who's going to pay for it. This is a problem, and I'm glad to see that you've come up very loud and clear that you need to know who's going to pay for this. If they would go back and look in some of their books and things that are in the Ministry of the Environment, they may be able to find that \$7-billion figure. That came from the bureaucrats about three years ago, so it could be a lot more now.

So I thank you for bringing that in and pointing out that somebody's got to pay for this. Sooner or later the

government's got to come up and tell us whether it's going to do this when it wants to push a bill like this through.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: My goodness. Thank you for the presentation. Could you give us some sense of the range of cost of carrying out implementation? You note that you couldn't do it, and the prior speaker said, "We can't deliver if we don't have the funding support." Are we talking about a 10% increase in your operating to implement the monitoring? Are we talking 20%, 30%? I don't have a sense of the scale.

Mr. Freiburger: I don't believe that any of us has a sense of the scale, and I think that's what scares us. What scares us the most is noted in my presentation: We have got one of the largest conservation authorities within Ontario, and we only have a population of 160,000 people. With that whole aspect in mind, we have to come up with a funding source that is at a provincial level, where you would have everybody sharing the costs and not make it a burden on a municipality.

The municipalities are already starting to revolt because there are times when they feel they are not getting proper funding for the programs that we as conservation authorities already have to carry out. It scares us to think that we're going to have to go forward and try to implement this program when we do not know where the source of funding is coming from. As a municipal councillor, I cringe at the fact that, once again, this could be on the backs of the municipal tax roll. Let me say that our municipality and all of the municipalities within our watershed want to make it perfectly clear that that is totally unacceptable.

Mr. Tabuns: To you, Mr. Chair: Mr. Murdoch has raised this figure of \$7 billion; he says that the bureaucracy has it. Can you, as the Chair, direct research staff to find that number?

The Vice-Chair: Actually, Mr. Wilkinson asked the same question earlier.

Mr. Wilkinson: Further to that, since it's Mr. Murdoch who said he got it from the bureaucrats, if he could just name those bureaucrats at the ministry, I'll look them up and we'll see where we got that number from.

Mr. Murdoch: I'd have to go and look—as I said, three years ago. As you know from O'Connor's report, we had to look at it because at that point the province did consider paying for it, because you can't implement something unless you're going to decide who's going to pay for it. Then, as you know, an election came along and it never happened.

So I don't have any names at this point. We can maybe look, but I would assume you'd just go and the same guys are still there.

The Vice-Chair: The parliamentary assistant, you have a question?

Mr. Wilkinson: I just need something other than "those guys," Bill. I'm sure you can be more specific, but thanks for coming in.

Mr. Murdoch: Well, they work for you now.

Mr. Barrett: They work for you.

The Vice-Chair: It's Mr. Wilkinson's turn, please.

Mr. Wilkinson: I know the honourable member will help me be more specific. There are a lot of people who work at the Ministry of the Environment.

I just want to get back to your question about equity. Of course, you said it's technically difficult and expensive to put it right across the province, but specifically about the fact that you're feeling that perhaps the municipality would not decide to extend the terms of reference to nursing homes and schools and that type of thing. Do you think that we should put it in the act that the minister, not just the municipality, would have some leeway to ensure that places where we have populations at risk would have to be included in the terms of reference?

Mr. Freiburger: I think that would be very wise, but what I'm referring to is, we have a number of these particular areas as nursing homes and so on that are not on municipal well protection.

Mr. Wilkinson: They're on private wells.

Mr. Freiburger: They're on private wells, and there's really nothing there that—

Mr. Wilkinson: Unless the municipality agrees to put them on.

Mr. Freiburger: Exactly.

Mr. Wilkinson: So do you think the minister, then, should have the power to put them on?

Mr. Freiburger: Are you meaning to put them on municipal water supply?

Mr. Wilkinson: No, to put them into the terms of reference so that the source water planning committee has to deal with them as well, just like a municipality could say, "Because that's a planned source of municipal drinking water in the future, we want that to be included under that section."

Mr. Freiburger: That, again, would be wise to do. I would agree with that, but once again, funding implementation is the key. Once again, who pays? It's a burden you're willing to put on the back of the municipality, by the sound of things, and that's something that we're not willing to agree to.

Mr. Wilkinson: Should the user pay, the person drinking the water, as opposed to the municipality?

Mr. Freiburger: I think who should pay is all of Ontario. If you take, as an example, the people in the GTA, hundreds of thousands vacation in our area, up in our watershed. They bring all of their fecal deposits, if nothing else, and deposit them in our watershed, and they will put no funding towards the paying for it under the current system. They bring all of that with them. I think that this has to be paid for equitably across all of Ontario, and I do believe that the only way this act will be flawless is if all people's water is protected, all of your rural landowners' water.

The Vice-Chair: Thank you, sir, for your presentation. Before you take off, I've been asked by the committee members if you have a written presentation that you can give to the members or to the clerk.

Mr. Tabuns: Your speaking notes, if we could have them, would be very useful to us.

Mr. Freiburger: Yes.

The Vice-Chair: Thank you very much.

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CHRISTIAN FARMERS FEDERATION OF ONTARIO

The Vice-Chair: The second presentation will be by the Christian Farmers Federation of Ontario. They can come forward if they're ready.

You can start when you're ready, sir.

Mr. John Kikkert: My name is John Kikkert, president of Christian Farmers Federation of Ontario, and to my left is Glen Duff, who will be presenting and going through our presentation. We have copies. I believe they're being passed out at this time.

First of all, I'd like to say thank you for the opportunity to present the Christian Farmers Federation of Ontario's views on the Clean Water Act. The CFFO represents 4,200 farming families across the province of Ontario. Our members produce a wide variety of agricultural commodities on a wide diversity of farm types.

I'll let Glen do the details.

Mr. Glen Duff: Thank you, John. Again, thank you for allowing us to be heard. We had quite a lot of feedback from our membership and a great deal of concern when the Clean Water Act was first announced. I would like to just give you a brief background on CFFO as a means of explaining why this is so important to us.

Our biblical principles are—I would also say that this is probably true of all the major religions of the world—that we are stewards. Our membership does not believe that they truly own their farms. They don't own the air, they don't own the water, they don't own the ground, they don't own the animals or the crops. They simply are stewards, which means you're doing it for someone else. The reason I mention that to you is, as a basic principle, I find it difficult to imagine any group in the province of Ontario that's more committed to clean water and to the environment than our farmers in the CFFO.

I would also like to mention one other thing about the CFFO. Contrary to what is probably thought by you and others in the province, we do not march; we do not do demonstrations. We were not part of the recent demonstrations at Queen's Park or in Ottawa. We believe that dialogue of this nature, as well as informal dialogue with the Ministry of the Environment, the Ministry of Agriculture etc., is far more important to achieving community results that we feel will in fact protect the environment much more than a regulatory approach.

We want to talk about four major points that we feel are important to raise. First of all, the obvious must be said. I hope it has been said by everyone who has appeared before you: To attack the goals and objectives of the Clean Water Act is attacking motherhood and apple pie. We fully support it in every way. But as you are all well aware, politics often deals much more with the

"who" and the "how" rather than the "what." This is why we're here: to talk about the "how" in a way we feel is supportive but at the same time critical in some areas.

One of our major concerns is the fact that the proposed act calls for the development of a plan without ensuring farmer participation or, for that matter, participation of other landowners. Surely we must recognize that the landowners and specifically the farmers are key stakeholders in source water protection. We believe it is necessary to include the farmers of the province of Ontario to participate as part of the multi-stakeholder group and the conservation authorities as they put their plans together. So we would urge you to consider this. These include traditional farm practices, some of which could be improved, some of which have been improved a lot in recent years. For example, in the case of irrigation, do we want our golf courses and our lawns in urban Ontario to be watered regularly when the farmer who is producing food in the province is stopped from irrigating? It's a question of priorities. We understand the importance of adequate quantities of safe water, but I think there could be a list of priorities in terms of how we conserve that water. We would urge you to consider that.

Secondly, the act empowers municipalities to regulate the plan by hiring inspectors. We believe that there's perhaps a cultural gap between urban Ontario and rural Ontario. Rural Ontario has a rich tradition of co-operation, of working with conservation authorities, of working in a community, of assisting and helping one another. We believe that regulating with inspectors, in fact, is not the best way to move forward. We understand the need to protect our source water, but we also believe that with normal farming practices there could be loss of opportunity and, of course, tremendous costs incurred by the landowner. So we believe that in fact this should be supported by looking at such things as the cost assessment, our third point.

We're concerned that when the plan for source water protection is drafted by the conservation authorities, there are no cost assessments included in that plan. We are concerned that the identification of the funding sources is not there, just as the other speakers have said to you. We believe that needs to be done in order to identify priorities.

We believe there is a better way than the regulatory approach. I'd like to simply give you a quick lesson on history, if I may. The Christian Farmers Federation of Ontario was very involved with the development of the environmental farm coalition back in the 1980s. The proposal that was made to the government of the day was to put together an environmental farm plan. The environmental farm plan continues to exist. The government of Ontario continues to provide funding to the environmental farm plan. This is somewhat voluntary; however, we would strongly encourage that you look at the environmental farm plan with the level of funding that is there—perhaps increased—and that you focus that plan towards source water protection. This can be done through education, peer review and working with the

conservation authorities and their expertise to implement those areas where you're concerned about source water protection. We think that's the best way to go.

Finally, our fourth point is one that we believe to be important. I believe it's recommendation 16 of the Walkerton inquiry. Before I talk about that, let me just simply indicate to you that the notice of proposal on Bill 43 indicated the following: "As part of the government's commitment to implement all of the recommendations of the Walkerton inquiry, the government has developed comprehensive source protection legislation."

That document talks about three and four years of consultation with many groups. I'm not aware of any farm groups that were part of that consultation; certainly, the CFFO was not. We believe that there should have been consultation, but in particular in the report from Justice O'Connor is as follows: "The provincial government, through the Ministry of Agriculture and Food in collaboration with the Ministry of the Environment, should establish a system of cost-share incentives for water protection projects on farms." That's recommendation 16 of the Walkerton inquiry. So your commitment to implement all of Justice O'Connor's recommendations is falling short on that one in particular.

With all due respect, when I see a plan that you ask to be put together that does not do anything on costs or any sources of those costs, I get the awkward feeling that in fact the government doesn't intend to participate in the sharing of those costs.

Thank you for hearing us. We certainly welcome your questions and comments.

The Vice-Chair: Thank you for your presentation. We're going to start with Mr. Tabuns.

Mr. Tabuns: First of all, thank you very much for the presentation. I'm not a farmer; my father was. But I don't know what he knew. What are the normal practices that you outline here that may be a threat to water quality that you are concerned this act may curtail, change or curb? Could you give me a sense of that?

Mr. Duff: It's difficult to give you specifics, simply because we haven't seen the plans. As I mentioned, we feel that farmers should participate in those plans. It's at that point, before a plan is put together—inspectors are hired, regulations are put in place, fines and postings are required, and now, suddenly, farmers become involved, and we don't think that's correct. At the very least, a very good way to start, by identifying exactly the concerns that you raise, is to involve farmers from the very beginning. We're not experts and scientists on the environment; we're experts in other areas. It's that kind of collaboration and co-operation that can move forward the safety and the availability of plenty of water in the province of Ontario.

Of course, there's the issue between the actual and the perception. Obviously, there are some within our province who believe that no chemicals should be used. I happen to be along those lines, but many of our CFFO members do use chemicals. Clearly, if those chemicals

are available through federal licensing, the question then becomes, are they used properly and are they used judiciously? I would like to believe that that's the case today and that they're not spraying by wetlands and some of those practices that clearly none of us would want to see.

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Mr. Tabuns: Thank you for that. I appreciate it.

The Vice-Chair: The parliamentary assistant.

Mr. Wilkinson: Thanks so much for the CFFO coming in today. We appreciate that, and all the input that you've had, really going back two years, from the notes that I have from the ministry. I know you'll be happy with the minister's speech yesterday, where she talked about the need to move to risk management officials as opposed to permit officials. I think that is in large part because of the input that we've received from OFEC, which you're a member of. Also the need to make sure we have biosecurity protocols—the minister mentioned that yesterday in her speech as well.

In regard to the question of representation, of course it's all kind of locally driven, but in some parts of Ontario, like my own in Perth county, agriculture is the biggest industry. I know that we're looking at the question of whether the minister should be a bit more prescriptive per source planning committee to ensure that there's no way, for example, that a major industry like agriculture couldn't be represented. I think there will be 16 on the committee, and we've been looking at that. But I know that the minister has taken that feedback as well, to make sure that you have those assurances.

In these meetings that we've had through OFEC—I have a list of them here going back over the last year—do you feel that maybe the CFFO's position has not been adequately represented, that there wasn't enough consultation with your farm organization, that the OFEC umbrella maybe didn't allow us to be nuanced enough in the consultation? I know we've met directly with CFFO, so I'm just concerned about that consultation part of it.

Mr. Kikkert: Basically, our part of the coalition has no problems with that. The comments that are expressed here today in our presentation are basically our members' viewpoints. That emphasis and that background has brought forth these points that we're bringing forth. Yes, we appreciate OFEC's position. We're working with that group and are very pleased with the eight points, I believe, that they've mentioned. We've put a little different—our grassroots members are emphasizing the funding and the involvement. This is where we've basically made our points today.

Mr. Wilkinson: Thanks, John. That clears it up.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing before us today and for your solid presentation. We agree that farmers are good stewards of the land and have always been. You're right on. The government is not following O'Connor's recommendations, which we have been saying. It has not been inclusive enough of farm groups, because you are the front-line stewards of the land. There

should have been more of a consultation process. I know they did nutrient management with at least 18 meetings out there for consultation.

Your organization has stated in the past that the proposed legislation, Bill 43, should “be changed so that the Ministry of the Environment is prohibited from approving any source water protection plans that do not include an assessment of the costs of implementation and a defined budget, with sources, for the implementation.” We talked a lot about the cost, because there’s no way we’re all going to get source water protection if the provincial government does not help with the funding. They’ve used precautionary principle terminology. If you define “precautionary principle”—I mean, \$7 billion may not even touch it. But I just want to ask you, are you convinced that the government is on the wrong track in Bill 43? In relation to costs; I can specify that.

Mr. Duff: I have addressed that, Ms. Scott. One of our concerns as an organization, of course, is the fact that two things have to be done: (a) you have to identify the cost involved. Certainly, if minimal gain is to be had, and it costs billions of dollars, that’s a no-brainer; you probably aren’t going to do that. But if smaller costs are involved and you can gain a lot, then you would spend that money.

My background in business tells me that you include those assessments and priorities when you put together a plan, so you need to first of all identify the cost of this improvement. Secondly, you then need to identify the source of those costs. If you look to the reality of what’s happening to the family farm—that’s our main stakeholder: We’re concerned about family farms in Ontario. As far as we’re concerned, I think this is an opportunity for the government to take some action on this specifically: that it look at requiring that the plan include the assessment of costs involved on initiatives and that it look at the funding of those costs, the source of those costs, because somebody has to pay for it. The question is, who benefits and who pays? If society is going to sort of raise the bar on environmental protection and source water protection—it appears that’s what society is demanding, and this is the right direction to go in—you definitely have to look at how you allocate costs.

The Vice-Chair: Thank you very much for your presentation, sir.

Mr. Duff: Thank you. We have handouts.

The Vice-Chair: Sure. We received it all.

The next presentation—I’m sorry?

Mr. Tabuns: While they’re coming up, Mr. Chair, I just have a request to you. Can you have our researcher tell us what the costs were for the Walkerton water disaster: the direct health care costs, the costs to affected residents in lost time and mortality, the cost of remediation—digging up all the water system—and the larger economic impacts of lost tourism and investment? There are two sides: prevention and dealing with after the fact.

The Vice-Chair: Can you give that request to the research department? Thank you very much, Mr. Tabuns.

CANADIAN FEDERATION OF UNIVERSITY WOMEN ONTARIO COUNCIL

The Vice-Chair: The next group will be the Saugeen Ojibway Nation. Are they here?

If they are not here, we’re going to move to the second one. It would be the Canadian Federation of University Women Ontario Council. They can come forward if they are here and they are ready.

Good morning.

Ms. Carolyn Day: Good morning.

The Vice-Chair: You probably know the procedure. You have 10 minutes to speak and five minutes for questions from the members. You can start any time you are ready.

Ms. Day: Thank you very much. The Ontario Council of the Canadian Federation of University Women welcomes the opportunity to comment on Bill 43, the Clean Water Act. My name is Carolyn Day, and I am a member of the CFUW Southport club in nearby Port Elgin/Southampton, one of 58 CFUW clubs in towns and cities across Ontario, with a total membership of over 5,700 women. The cover letter explains our mandate. You will find club locations listed in appendix 2, including one in Walkerton. I am a past president of CFUW Ontario Council. I also represent Ontario Council on the MNR advisory panel for the Great Lakes Charter Annex agreements.

This morning I would like to share highlights of our submission with you. Since 1988, CFUW has had policy asking that the government “enact legislation to set rigorous quality standards for ground and drinking water, which would be updated frequently to reflect current research and increased technology.” You will find copies of some CFUW policies that are relevant to this legislation in appendix 1.

CFUW Ontario Council applauds the continuing commitment of the present government of Ontario to meet the recommendations of the O’Connor inquiry with the introduction of the Clean Water Act. We commend the clear, all-encompassing vision that puts public interest and public safety first, and in which prevention and protection are the overarching principles. The scope of Bill 43 defines this vision and translates it into practical implementation strategies.

We are very pleased that during the crafting of this legislation you established expert technical and implementation committees to assess and advise, gave many opportunities for public input and, in particular, listened and responded to the many concerns and recommendations you received.

CFUW Ontario Council is very supportive of Bill 43.

In our February submission on this bill, we outlined some of the specific provisions of this revised bill that are especially significant to your vision and that need to be supported in this review and retained in the final draft of the bill. They are all important, but I would highlight section 13, with the detailed outline of assessment reports and the establishment of the water budget—a great im-

provement. I would also bring to your attention our recommendation for section 13 that, for the duration of the assessment process, the minister impose a provincial moratorium on significant new projects or permits until approved source protection plans are in place.

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Sections 35 and 96 are important, which establish precedence for the Clean Water Act when it is in conflict with municipal official plans or bylaws or with other legislation, especially the Nutrient Management Act. This is a major improvement to the act which clearly underscores the government's priority. CFUW strongly endorses these sections and it's vital that they be retained in the final copy of the act.

Subsections 53(1) and (5), on the authority to change, limit and revoke water-taking permits: These provisions translate the establishment of the area water budget into a reality. A water budget doesn't work unless there is a means of staying within the limits it imposes, especially in cases where current permits and practices already overextend that budget. This important section of the bill provides the means to correct unsustainable past practices.

There are, however, three areas of the act where we have concerns and offer related recommendations.

Our first concern is the need for more explicit linkage of this act with the provisions of the Great Lakes Charter Annex agreement. This alignment is vital to successful implementation and to the successful realization of a coherent government policy. It is especially important since nearly all of the source protection areas defined under the Clean Water Act abut one of the Great Lakes.

We recommend that section 12(1)2 be amended to include the words "including the Great Lakes Charter Annex agreement signed December 13, 2005, and any other amendments made...."

We recommend that the provisions of sections 74, 75 and 76 be made mandatory and that the word "may" be changed to "shall" in each of these sections.

We recommend that the Ministry of the Environment and the Ministry of Natural Resources work together as an interministerial team to help to avoid wasteful duplication and to help coordinate and facilitate information flow, data, research and standards between these two vital initiatives, so we would add to section 74, "One of these shall be an interministerial advisory committee with members drawn from the Ministry of Natural Resources and the Ministry of the Environment."

We recommend that the Great Lakes targets not only be mandatory but that they align with the requirements of the annex agreement within limits set by the area's water budget, so in section 75 we have added the phrase, "The minister shall direct ... in accordance with the direction, and in compliance with the provisions of the Great Lakes Charter Annex agreement, a report...."

In section 76, on targets, we recommend an amendment to read, "The minister shall establish targets ... which are aligned with the provisions of the Great Lakes Charter Annex agreement, for source protection areas

that contribute water to the Great Lakes or draw drinking water from it."

Our second concern is the need for consistency in the protection of the sources of drinking water offered to all citizens of Ontario in all geographic areas of the province—and you've heard a lot about that this morning. CFUW Ontario Council is disappointed that despite the recommendation of Justice O'Connor, the source protection of water in watershed areas that are not covered by conservation authorities is still not mandated in this legislation, nor is the source protection of water and watersheds on First Nations reserves, nor are private wells. It is important that the level of protection for all these areas of the province be consistent.

The Ministry of Natural Resources has a presence in the areas of the province that are not covered by conservation authorities and they have the expertise and the organization to help manage the source protection initiatives, so the Ontario Council recommends that section 5 be amended to read, "The minister shall make a regulation.... The regulation shall designate a person or body...."

We further recommend that the Ministry of Natural Resources be designated by the minister as the body responsible for developing and supporting source protection.

Our third concern is the need to ensure the provision of adequate, sustainable funding to support the development, implementation and enforcement of this bill. CFUW Ontario Council is concerned that the funding provided by the government of Ontario be sustainable over the long term and not subject to the yearly negotiations of conflicting budget priorities. Funding must be sufficient to ensure both compliance with and enforcement of this act. In particular, owners of private wells, owners of small and medium farms, and small municipalities, despite their best wishes to comply, may not have the financial resources to do so. CFUW Ontario Council recommends that an explicit commitment to provide adequate, sustainable, long-term funding be included in the act and that a detailed plan outlining how that funding will be generated also be included.

You will note we recommend that part of the funding required for implementation of and compliance with the act be generated by various fees, charges and surtaxes, which would also promote conservation by water consumers.

We recommend that funding be considered a priority in the next provincial budget, that a comprehensive public education program and targeted incentive programs be undertaken, and that dedicated funds be set aside which can be accessed by small landowners, farmers or municipalities.

We would draw your attention again to the excellent recommendations on funding contained in the 2004 report of the implementation committee and remind you of the suggested wording submitted by CELA in 2004 to this purpose.

On behalf of CFUW Ontario Council, I thank you for your time this morning and for your determination to

support, strengthen and implement this landmark bill. We'll continue to monitor the progress of Bill 43 and other water issues in the province.

The Vice-Chair: Thank you very much for your presentation. Now we'll open the floor for questions. We can start with Ms. Scott.

Ms. Scott: Thank you very much for your thorough presentation. You've done a lot of work and suggested a great many amendments to strengthen the bill. I'm proud to say I do have a chapter of the Canadian Federation of University Women in Haliburton Highlands that I've met with.

Ms. Day: You have. I think there is one in the riding of each one of you. I checked.

Ms. Scott: Is that right? Isn't that wonderful. Good research skills.

We have limited time, so I was just going to focus on one area. I will mention, though, that you're correct on the MNR. They have a great GIS system that is not utilized enough. So there need to be more integrated communications systems.

Ms. Day: I understand there already is a start-up committee that's working together, but that really, really needs—we were talking about where the money will come from. If MNR is doing one thing with the charter annex agreements and the Ministry of the Environment is doing other things, most of them—especially because the Great Lakes abut every one of those areas.

Ms. Scott: There's no question that there's not enough communication done, and we can improve on that.

You mention costs, and that's been a huge factor through all the presentations because nothing is going to be implemented without higher levels of government being a partner in this. Do you think it's appropriate, the way the bill is and the funding scheme? How would you like to see a funding model develop for Bill 43?

Ms. Day: I would like to see it, and I'm not a lawyer, so I don't have the language. That's why I referred you to the implementation committee report, as well as CELA, which has crafted wording that could be inserted into the bill. With great respect—I know this is a multi-party committee—it needs to be proof against a change in government where the priorities change. I was really disappointed, reading Hansard, to watch the debate, with the exception of Mr. Tabuns—and I thank you for that—break down on party lines. That's really disappointing when this is such an important issue. Everyone needs to be working together. You can't be doing potshots and playing games. We need to have this bill proof against—regulations can be changed easily, but if it's in the bill that the funding will be provided, that's harder to change.

Ms. Scott: That's what we're trying to highlight here, that changes to the bill need to be made.

The Vice-Chair: Mr. Tabuns?

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Mr. Tabuns: Thank you for the presentation. I appreciate it. Can you say whether or not this bill will, in fact, be effective if the funding is not provided?

Ms. Day: I obviously have been listening this morning, and I think, especially in the smaller areas, they

don't have the funding. They don't have the base to gather funding. They also don't have the expertise. So that has to be imported. Sometimes, they don't have the will; we've got to admit it. Some small communities say, "The water has been fine forever. Don't bother me. Don't give me all these regulations and new rules." So we really need a very firm foundation, and funding will be a big part of that. Most of the pushback you've gotten so far has been on funding, and I think if you can show how the funding will happen, then everyone will support this bill.

The Vice-Chair: Ms. Wynne?

Ms. Kathleen O. Wynne (Don Valley West): Carolyn, thank you very much for being here.

I want to just say off the top that it's not surprising to me that you've come forward with a really thorough and helpful submission, because my connection with your organization in my riding is always one that is very helpful to me on policy issues. So thank you very much for doing that.

Your role on this issue has obviously been visionary. You've been at this for many years in terms of protecting water. I wanted to ask you specifically about the Great Lakes issue. You've brought forward an amendment, or a couple of amendments. A number of groups have said to us that they're looking for integration of what we're doing here with the work that's been done on the Great Lakes. Is what you brought forward, to your mind, sufficient to mean that there would be integration among the different plans?

Ms. Day: I think that if the members of the Ministry of the Environment and the Ministry of Natural Resources are working together, there is so much expertise that has been generated over the past two years during the negotiations to get the annex agreement together.

Next year, of course, Ontario will chair that international committee for the implementation of the Great Lakes Charter Annex agreement. So what better time for Ontario to work together, as the two ministries—you all work with the silos. You know what happens, that it's so hard to break down funding and ministerial mandates to coordinate.

But this is such an important bill. It's such a landmark. So often, governments are bringing up legislation, looking at the next election, and it's so short-term. This is different, and I think it's so important that we work on it.

Ms. Wynne: That's right. This really has nothing to do with an election platform. This has to do with doing the right thing in the province. Thank you.

The Vice-Chair: Thank you for your presentation, Ms. Day.

I want to repeat the call on the Saugeen Ojibway Nation. They are here? They are not.

ONTARIO AGRI BUSINESS ASSOCIATION

The Vice-Chair: We're going to move to the Ontario Agri Business Association.

Good morning. Welcome.

Mr. Dale Cowan: Good morning, Chair.

The Vice-Chair: You have 15 minutes; 10 minutes' speaking time and five minutes for questions. You can start when you're ready.

Mr. Cowan: Thank you, Mr. Chair and honourable members. My name is Dale Cowan. I own a business in Guelph called Agri-Food Laboratories. I'm also currently vice-chair of the provincial nutrient management advisory committee, but today I'm wearing a different hat. I'm here as a director on the board of the Ontario Agri Business Association. So thank you for the opportunity to speak to that.

The Ontario Agri Business Association serves as representatives to organizations that operate approximately 375 country grain elevators, feed manufacturing facilities and crop input protection supply companies. We serve as a major source of employment in rural Ontario, with payroll approximately \$250 million to our members—that's about 8,000 Ontario residents—and oftentimes in small rural towns we are the major source for employment. We operate within a very competitive and highly capitalized environment. We are an essential supplier of products and services to Ontario agriculture and we contribute greatly to the economic and social viability of many rural communities.

The membership of the Ontario Agri Business Association provides products and services to primary producers involved in livestock and poultry, cash crop, horticulture and specialty crop production. While recognizing and supporting the concept of source water protection, it is essential that the proposed Clean Water Act allow our agri business members to operate competitively in both the North American and global food marketplace.

We are pleased to submit some of our comments. We won't cover everything that's on the handout; we'll just highlight a few things.

We are in support of the concept of source water protection. However, we think it's imperative that Bill 43 be very clearly limited to the protection of municipal water supplies—we need to define just what kind of water we are protecting—and to adopt a risk management versus a risk elimination approach. The current language in the bill around the permitting process causes us some concern.

The basic premise of the legislation must be founded on good, science-based principles. When that science-based standard is not available or is lacking, then credible research must be conducted in advance of enactment of the legislation. There must a process of monitoring current, evolving and future technologies to verify that the standards that are currently in place are effective and appropriate. We would like, as much as possible, to see a precautionary principle used at an absolute minimum. Good science greatly reduces the number of unintended outcomes. When you don't have the science, you start making assumptions which may or may not be valid, and the precautionary principle in and of itself may become less effective and not do what we think it's going to do.

At this point, I'll turn it over to my partner here, Ron.

Mr. Ron Campbell: Thank you. My name's Ron Campbell. I'm a staff member with the association.

Continuing on with some of our comments, one of the key elements of this act is the emphasis on local control of the plans in the various conservation authorities across the province. There is some concern; we want to make sure that standards are put in place that create transparent and consistent decision-making that is interpreted and implemented consistently throughout the province. Many of our members conduct business in a wide area, and if one business were to be in an area that had stricter requirements than another area with similar issues, it could create a competitive disadvantage. We want to make sure, therefore, that clear direction is provided to both the source protection committee and the authority to ensure that this consistency takes place.

Another area of concern is the powers of entry that are allowed for inspectors. We understand some of the reasons why this was put in place. However, most of our members have health and safety policies and procedures, have biosecurity policies and procedures to prevent the transmission of disease, especially in the feed industry. So there must be some caution undertaken by the inspectors, either through the authority or MOE or whatever it is to ensure that they're following these protocols. We're not putting them up there to be a roadblock to inspection or investigation, but there are some good reasons behind that, and that has to be taken into consideration.

Mr. Cowan: Thank you. That concludes our points.

The Vice-Chair: Thank you very much for your presentation. Now we have a lot of time for questions. We are going to open the floor. We're going to start with the parliamentary assistant for the Minister of the Environment, Mr. Wilkinson.

Mr. Wilkinson: Welcome, to the Ontario Agri Business Association. Of course, Ron Coghlin is one of my constituents, so I'm very familiar with your organization, particularly in my riding and in this part of Ontario.

You'll be glad to know, if you didn't realize it yet, that when the minister spoke to the committee yesterday, she specifically told the committee that there will be amendments to the act to ensure that biosecurity concerns are addressed. She particularly wanted me to say thank you to farm organizations and in particular to OABA. The work that you're doing with HACCP is amazing.

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What I want to get into is, we've had, obviously, a difference of opinion here. We've had people come here just today, saying, "You've got to change this act so it's everybody, right across the province; that's the only equitable thing to do, and there should be the precautionary principle everywhere in the bill." You've said the opposite of that, which is that we should scope down the municipal sources of drinking water, and that the precautionary principle, in a sense, is in conflict with science.

Could you just elaborate on that for us on the committee why you think your position makes more sense than what we've been hearing from others today?

Mr. Cowan: From the standpoint of the precautionary principle, I see that when you don't have all the answers, then you invoke the precautionary principle. All we're saying is that you should pursue the science, because what it can do is stifle any initiative or new ideas. And your science, if it's in place and no one wants to challenge it—if you don't understand why you have a problem and you don't want to apply the science to it, putting the precautionary principle in place because you don't want something to occur may not stop that thing from occurring. So you have to understand what it is that you're protecting, and I think that goes hand in hand with understanding what water sources you're protecting. I don't think, from a cost standpoint, that we should be, on a provincial basis, trying to protect absolutely every drop of water in this province. I think there are some sources that are definitely suitable for drinking purposes, and irrigation and recreation and everything else goes along with it. So I don't think they should be subject to the same standard as drinking water.

The Vice-Chair: Thank you, Mr. Wilkinson. Mr. Barrett?

Mr. Barrett: Thanks to the Agri Business Association for presenting. You indicate that economic studies are necessary and should be undertaken. In one section you propose "that a section be added to Bill 43 that indicates a mechanism whereby the province"—this is at the top of the second page—"can provide funding to support the objectives of" source water protection.

In your business, with the feed mills and co-ops, the groups and individual farmers you deal with, I wonder, given that there's no mechanism in the legislation that says who pays for it, the assumption is that municipalities are going to pay and agribusiness, farmers, landowners will pay. Could you give us an indication of what the economic climate is out there in Ontario right now? If you could just give us a thumbnail sketch from the perspective of your members and what they see with the customers who come to the feed mill and what have you.

Mr. Cowan: Certainly. Well, it's dismal. We have very high energy costs. We have very low commodity prices. The return to the farmers is negative. Since farmers are our customers, we are challenged within our marketplace to maintain a critical mass of business. We have tremendous attrition and restructuring going on within our industry. We are technically over capacity in some regards. So we have extremely thin margins, highly competitive businesses, and any extra burden that comes into that equation is going to be just that: a financial burden. That's why I made the comment about the permitting process. We kind of see that that potentially could just be another form of taxation without representation: buying a licence to operate because you sit on the bank of a river as opposed to allowing us time to put a mitigation strategy in place funded out of business operations. You can give us time or you can give us money; that's one way to look at it. But it's a highly competitive and a very low-margin business right now. Farm communities, I'm sure you've heard, are under pretty big duress right now.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thanks for the presentation and thank you for coming today. It has been very good for us to hear this input. You note in one of your points that we should do the necessary economic studies, essentially to balance out legislation and regulation related to the source waters as opposed to the cost of improving municipal treatment and water delivery systems. In concrete terms, are you saying that we could actually leave source waters unprotected if we had a really good chlorination system? Can you clarify to me precisely how you see that working?

Mr. Cowan: I don't see the day when we will not chlorinate. I understand what you're saying, that, yes, there are certain threats and risks that need to be identified, some contaminants that have potentially long-term health effects. So yes, we need to protect the sources. I'm not so concerned that we need to protect absolutely every source of water; that's not going to be useful. But I think the delivery of clean, safe water to communities is the last barrier to a multi-barrier approach, and that certainly needs a lot of scrutiny.

I look at infrastructure in some of these large cities being rather old and needing a lot of repair. If there are limited funds available, as there always seem to be, where are we going to spend them? Yes, I see protecting source water as being one, but also the delivery of good, clean water is kind of the last defence, and I think that's where there needs to be a lot of effort put in.

The Vice-Chair: Thank you very much for your presentation.

GEORGE SPENCE

The Vice-Chair: The next presentation will be by George Spence. Is George Spence around? If he's here, he can come forward.

Welcome, Mr. Spence. The floor is yours. When you're ready, you can start. You have 10 minutes for a presentation and five minutes for questions.

Mr. George Spence: Thanks to the committee for coming to Walkerton, and thanks for allowing me time to make this brief presentation. My name is George Spence. I live near the village of Mildmay, Ontario, and I come to the committee as an individual. I've never done this sort of thing before, so bear with me. But I just couldn't let this pass, because I've read the bill several times.

In May 2000, I worked in Walkerton and was very sick because of the water. I'm still suffering with related problems. Clean water is very important to me, but also, I'm a farmer, a rural landowner and an appraiser. I've worked with farmers for over 35 years, with Farm Credit Canada, so I know the strife in agriculture today. I also worked on the Healthy Futures program. This was a water quality improvement program through Saugeen Valley. That's enough for background. I also do financial consulting for Agriculture Canada.

My concerns: I have outlined eight. Just from listening to a few of the presentations earlier, I think they're more

down to a little bit of my own interests and close to home, but anyway, here goes.

I'll start off with my main concern with Bill 43. My main concern is what it takes away. To me, it takes away significant property rights and personal rights. A permit official can impose any conditions limiting a landowner's use of land, can designate my land, enter my land, inspect my land, fine me, I guess, if I'm not following protocol, and I could possibly even go to jail. Also of main concern is that it can expropriate my land without compensation. This is the way I read the act, as an appraiser. It can take away any claim for injurious affection. It can devalue my property because of the restrictions imposed. I'm a little bit concerned about democracy. I'm just thinking this bill goes a little bit too far in this area.

My second concern is what it does not give in return. To me, it gives absolutely no support or protection to the rural landowner. If I follow all the rules of my environmental farm plan, my nutrient management plan, Bill 43 permitted uses for designated areas, and if I log and document all my actions on my farms, and let's say the village next door has a water problem and people are sick, this bill gives no relief or support to me as a rural landowner. There is no mention of anything like that. If I'm named in a large lawsuit, I just stick it out myself, I guess. To me, this just does not seem fair.

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A third concern is that there is no help or assistance for me to meet the requirements of being in a designated protected area. There's no help for manure storage, fencing cattle out of creeks, water runoff protection, capping wells etc. I know from many different ways that the agriculture industry cannot afford these extra costs at this time.

My fourth concern is the lack of restrictions on the local villages and municipalities. I see that there really aren't any protections against the poor practices of the local water takers. They can put a shallow well in a low area next to my farm. They can place a well next to a creek. They can operate a well right next to a creek. There might be water filtration before chlorination, there might not be, and sometimes the water is not even chlorinated. Are these wells checked and maintained? I'm very concerned.

My fifth concern is how to designate a threat or protected area. I've just prepared a few little diagrams. I'll hand them out, if that's permitted, both ways on the table.

I said that my concerns are close to home. I thought an example of just how I can see the bill applying to me or some of my concerns might be of interest. Just a sample farm; it happens to be my farm, 150 acres in the middle of the page. At the front of my farm is a low, wet area, and it extends to the west up to four of my neighbours' farms. This low area has on its edges about five larger barns, with probably a 1,000-head capacity for beef cattle. There's a municipal drain that runs through the centre of this low area and goes across the road into the village of Mildmay. I might add one little thing: Before it gets too far, the drain empties into a duck pond, where it

then goes into a small creek. Eventually, if you follow on to the east, it empties into Otter Creek.

You might see the number 3 with an X there. That is the village of Mildmay's well, where they draw their water. It's an artesian well. I understand that there's no filtration for turbidity before it's chlorinated. The well is 50 feet from the creek, at the most. I've seen when flooding occurs that it's right up to the edge of the well.

Then if you could go further to the west, across Highway 9, there's a public drinking water system there. It's an artesian well again, which is common in this area. The public come there to fill up their water containers and take them to Walkerton, to their cottage or whatever. I estimate that there are at least 100 cars a day that go there to take water. There is no treatment or any chlorination of this water.

These are the concerns to the north of my farm, but my main concern is to the south. If you look at the bottom of my farm, Concession 6 and across the road, here is a creek with about a 1,000-gallon-per-minute capacity that goes directly underground. Before the creek gets to go underground, it bypasses within feet of three barns, and cattle are pastured in the creek at most times of the year—and I say, "in the creek." Then this water goes directly underground. I can guess that it might go directly under our landfill site, which is across the road. And does it go directly down to the village of Mildmay?

Again, back to how to designate where the water comes from, or protected areas.

The next page, if I could just take a minute, is sort of a local map of the area. From what I'm told, the whole area of Teeswater, Formosa and Mildmay is over a large underground aquifer. They're all flowing wells in these villages for municipal water and a lot of private water-takings. What I wonder is, where does this water come from, say, for Mildmay? How many streams go underground in this area? How many uncapped wells?

My other concerns with the bill, and I'll be brief, are subsections 42(6) and 53(5), the authority of a permit official. To me it is just far, far too broad. Where do these officials come from? I read in the paper our local Saugeen Valley Conservation Authority has difficulty hiring people now. I would not want this job. To me, this would be a job that would be very difficult to fill.

Another concern in the act is the definition of "drinking water threat" and "significant drinking water threat." These definitions are far too broad to ever administer.

The last concern that I've mentioned here is the cost to administer Bill 43. To me, it's got to be huge. Is this just going to be another gun control situation? I think so. Costs, I would think, would quickly get out of hand. Also, I feel the stress on farmers and rural landowners would be very extensive—far more than damage, maybe, from unsafe water.

The Vice-Chair: Thank you, Mr. Spence. We now have five minutes for questions. Mr. Barrett?

Mr. Barrett: Thank you, Mr. Spence. You covered a lot of areas. I'll just focus on the issue around expropriating land without compensation. There are concerns out there around property rights. I'm hearing concerns

somewhat akin to what we've been hearing about gun registration over the last 11 or 12 years. Under the Expropriations Act, compensation is required, and under section 83 of this act, it does allow land to be expropriated. However, that next subsection, 88(6), indicates that nothing done in compliance with the Clean Water Act can be considered an expropriation. So you've got a green light. You can go ahead and do it and it's not counted as expropriation, so you don't have to compensate. It's a kind of back door—

Mr. Spence: That's my understanding, the way I read it.

Mr. Barrett: This is my understanding as well and I just wonder—I don't know—is this the country we live in? I'm surprised to see this kind of stuff in here. Often-times we do see overreactions. Any further comments on that? It's something that people are worried about.

Mr. Spence: Actually, on another one of my properties I'm undergoing expropriation right now. I'm in the middle of it. Three years later, and my lawyer's bill is \$30,000. But to me, when I read this, because I have been learning about expropriation a fair bit and I am an appraiser, it is just expropriation without compensation. I just don't think that's democratic and I don't think it's fair.

If my property is devalued because of the designations and so on, I end up with the same thing. My value is lower. My loan-to-mortgage ratio is different. I would have difficulty borrowing if a lot of my land is designated this way.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Mr. Spence, thank you for coming today. It's pretty powerful testimony. You were affected by the water contamination.

Mr. Spence: Yes.

Mr. Tabuns: So you know the consequences of things going wrong. You're concerned about this bill. What would you recommend that we do?

Mr. Spence: I guess it's great to come here and voice my concerns and condemn, but I think there are solutions and probably some of us sitting around here know what they are. There has to be a sort of program where we can educate people and help them meet the requirements of protecting water. There can be programs and funding to do this. When I worked with Saugeen Valley on the Healthy Futures program, I couldn't believe the desire of farm people and rural landowners to spend their own money to really improve safe water. I certainly have found that farmers are very environmentally concerned. If you can give them a means—maybe of having their farms designated as a sample and then having them get advice and help in being able to meet the requirements of a designated area, on a voluntary basis, for a few years and having them work with this program. Then, if more restrictive requirements are needed, go ahead with a bill like this, maybe without the teeth that are involved.

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Mr. Wilkinson: Thank you so much for coming in today, George. We appreciate it. Just to update you on where we are with some of the things that the minister

has said, this is a work in progress. That's the whole idea of having public consultations.

We definitely heard feedback about this whole idea of permit officials and about how we need to go to risk management first, which kind of fits in with what you're talking about. In my own similar experience with the environmental farm plan, which is a voluntary plan—it's wonderful—even though sometimes there was the CURB program that helps that, the farmers are the first ones to jump in to try to be the best steward. It's their land and it's their water that they're sharing with everybody else, and they are stewards.

So my question has to do with your central premise that if we did risk management first, and at the end of the day we do have a person, whether it's a farmer or not, who is allowing a significant threat to drinking water, do you think it's okay for the state, in that sense, to be able to take action? Or should they just stand back and say, "Well, there's nothing we can do"? There must be a point where the common good has to come into play. Maybe you could give us examples of where you think that line should be.

Mr. Spence: I could agree with that, if there is the education and help and support first, whether it be two years or five years. At that point, if there are still significant concerns and threats to our water—drinking water specifically—then I would think there has to be authority and some action taken on those individuals. But I don't think we're at that stage yet. I know our local municipalities have really improved their act because of Walkerton. I think generally individuals everywhere are concerned and farmers are doing their best to improve water quality.

Mr. Wilkinson: We agree with your concerns about the science. Unless people on the ground believe the science that's being done right now that the government is paying for—some \$120 million over five years. We can't get people to buy in if they don't agree that what we're saying marries up with their own experience on their own wells. Farmers all have their wells, so they all have a very good idea of where they think their water comes from and where it's going to. That is the work. There are great patches of information across Ontario. We just don't have the information. That's why that's getting done first. If that's not there at the bottom, you're right that we'd have real trouble with people buying into it. Just like your question about the aquifer—

The Vice-Chair: Thank you for your presentation. I've been asked by the committee if you'd like to submit your speaking notes to all members.

Mr. Spence: I would be glad to do that. I really do appreciate the time. Thank you very much.

ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

The Vice-Chair: The next presentation will be from the Ontario Sewer and Watermain Construction Association. You can start when you're ready, sir.

Mr. Frank Zechner: Good afternoon, distinguished members of this committee. My name is Frank Zechner. I'm the executive director of the Ontario Sewer and Watermain Construction Association.

The Ontario Sewer and Watermain Construction Association greatly appreciates the very rare and valuable opportunity to make constructive comments to you here in Walkerton today. We recognize that this committee plays a vital role regarding Bill 43 and that many, many stakeholders would like to provide their views, comments and recommendations. The Ontario Sewer and Watermain Construction Association, therefore, will restrict itself to a very few and limited number of comments and leave it to the others with expertise in their respective areas to deal with matters of development, construction and commercial activities.

To give you a bit of background about our association, our association is about 35 years old. We represent over 700 member companies that are engaged in the construction, repair and rehabilitation of sewer and water mains throughout the province of Ontario. We have as one of our core values the protection of the water infrastructure that we've come to rely upon for the delivery of clean drinking water from our lakes, rivers and groundwater sources through treatment plants through to the homes, businesses and institutions of this province.

The Ontario Sewer and Watermain Construction Association recognizes that the provincial government, and the Ministry of the Environment in particular, have genuinely good intentions with respect to the protection and enhancement of the safety, quality and reliability of clean drinking water sources for the province, its institutions and its businesses. We are, however, concerned about moving forward with the bill as currently proposed. One of the concerns we have has to do with the costs and benefits of the legislation. To the best of our knowledge, our association recognizes that through the Watertight report, which was released by the Ontario water strategy expert panel last year, there is an \$18-billion water deficit in the province at this time, and it is growing.

The infrastructure deficit that I'm referring to is essentially the difference between what is needed in terms of actual investments in terms of labour and materials in order to restore our aging water systems up to a reliable and pragmatic condition and what is being invested in it today. That \$18-billion deficit is going to be beyond the scope of any one stakeholder in this equation. It is beyond the scope of any one ministry of the provincial government to restore this infrastructure deficit. It's beyond the financial means of municipalities. It's going to require the combined efforts of all stakeholders in order to bring this forward.

We also have other infrastructure deficits in the province, not just a water infrastructure deficit. Again, Minister Caplan, through public infrastructure renewal, has reminded listeners in various speeches that there are other deficits, such as road and transit system deficits. When you look at water, when you look at roads, when you look at transit, when you look at other core

infrastructure needs, the estimates easily exceed \$100 billion in terms of hard dollars that must be invested into our aging and crumbling infrastructure in order to restore it to the operational levels that were originally intended.

In reviewing the costs of Bill 43 as proposed, then, one does not look only at provincial revenues and provincial finances. We have to look to the resources of all stakeholders within the province of Ontario. Simply because Bill 43 may or may not require expenditures by the province does not mean it's costing the province. There could be the possibility of significant costs of consultants, reports and studies being undertaken by order of Bill 43 by the various conservation authorities, municipalities and other stakeholders. Every dollar that is spent on studies and reports is one less dollar that's available to address the infrastructure deficit that we now have.

There are means and there are genuine concerns about protecting water sources throughout the province of Ontario. We recognize that. We recognize that there are valuable lessons to be learned and that should not be forgotten in terms of the Walkerton tragedy six years ago. We must comply with not only the laws of the land and the recommendations of Mr. Justice O'Connor, but we must move forward in a pragmatic fashion and with a balanced approach.

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It is the first recommendation of our association, then, that we have a cost-benefit analysis for all of the measures that would be required by all stakeholders in terms of costs to comply with Bill 43 if it's passed in its current form.

To the extent that there are requirements for the formation of committees, to the extent that there are requirements for the establishment of studies, to the extent that there are requirements to amend or reconfigure bylaws and official plans, these are all hard costs that must be borne by somebody at the end of the day—people such as myself, a homeowner; such as the people who have already made presentations here, who are farmers, community interests, the people sitting in the audience behind me. They end up paying through their own taxes, through their own user fees, through their own property taxes for whatever is needed in order to provide a clean and reliable source of drinking water for all of us. Simply because it doesn't come out of provincial taxes, it's not a matter that we can take any relief from. We have to look at the total cost of all of the measures that we're basically placing on all of the stakeholders. I believe there are significant administrative costs associated with Bill 43 that might otherwise be reduced or eliminated if we were to rework some of the existing legislation and some of the existing tools we already have.

In terms of specific comments, again, I just wish to remind this committee that simply because the province is not spending dollars directly for the compilation of studies, simply because they're not doing the amendment to the zoning plans, simply because they're not doing the

amendment of official plans, simply because they're not hiring the consultants who are looking at and developing these source water protection plans does not mean that there aren't dollars disappearing from the system. Each and every dollar that is spent on studies and reports is that many fewer dollars that are available for infrastructure improvement.

There are other possibilities of impacts on our activities, and I'll give you just one narrow example in terms of our industry activity going on. From time to time, our contractors are required to either install, repair or replace existing water and sewer mains beneath the roadways, and quite often they're fairly deep and those depths are below the existing groundwater levels. To the extent of what work is required, then, if you open up a trench in a roadway and the elevation of that trench is below the groundwater, the groundwater will then flow into the trench and create a working hazard. In order to reduce the working hazard and allow safe and efficient work on the piping systems, dewatering of the trench must take place. Quite often, if it's a large project and extensive dewatering, contractors will then have to apply through the Ministry of the Environment for a permit to take water. We are concerned that with Bill 43 and its possible impact on groundwater sources, on water budgets, on activities, there would be extensive delays and complications to the water-taking permit system.

We think there should be simpler and more modest concerns addressed by Bill 43, and these can be achieved through existing mechanisms such as boards of health, the Ministry of the Environment, planning committees etc.

Those are my comments, and I'd be happy to respond to any questions you may have.

The Vice-Chair: Thank you, Mr. Zechner, for your presentation. Now we open the floor for questions. We'll start with Mr. Tabuns.

Mr. Tabuns: Mr. Zechner, maybe I'm misunderstanding you, but are you saying essentially that we should do a cost-benefit analysis and decide whether or not the money to carry this forward should in fact be invested in sewer and water mains, as opposed to putting it into prevention of contamination of source water?

Mr. Zechner: To the best of my knowledge, no cost-benefit analysis has been done. The cost of doing all these studies may in fact be \$1 billion over five years, I don't know, or maybe \$200 million. I don't know what the cost is for everyone to comply with the new requirements in Bill 43, but there is a cost there. If the people of the province of Ontario agree we should spend an extra \$1 billion of our scarce resources on source water protection, fine; that's a priority and there's going to be less money available for treatment plants, less money available for inspectors, less money available for the piping systems. I think you have to move with a balanced approach. You have to look at all of these needs, and if you only have \$1 billion available over five years, don't put it all into one. Have it measured out. If there are fewer reports, maybe the cost of complying

with Bill 43 could be reduced to \$200 million instead of \$1 billion. I don't know what the dollars are, I haven't seen anything, and certainly I'm concerned about, when you're establishing basically an entirely new bureaucracy, what the cost of that might be.

Mr. Wilkinson: Thank you so much for coming in and sharing with us. Just getting back to what Justice O'Connor was telling us, and told all of us before the last election, before we all made a commitment to actually implement the O'Connor recommendations: He's saying that it makes more sense, and maybe it's just innately more cost-effective, to try to keep the sources of your water clean to begin with. That's the first of a multi-barrier approach to ensure the one thing that people absolutely demand in this province and have a right to, which is that if they turn on the tap, the water is safe.

We were talking earlier about the cost of not doing it; that's the other thing. From a financial modelling point of view, we have to look at the cost of not doing this. We've had a very strong recommendation, from the justice who went over this extensively, about the need for us to do that. But I take your point about the need for us to find that balance, because there are limited resources.

In Oxford county, which is the most expensive one we've been able to find so far, it's about \$1.65 per household per month over 10 years to make sure that they actually got some of their water rates going to make sure that the sources of their drinking water are clean. That, I think, gives them assurance but also reduces costs later on. So is O'Connor wrong on this, in your opinion?

Mr. Zechner: Absolutely not.

Mr. Wilkinson: No? How do we balance that?

Mr. Zechner: We agree entirely with source water protection. It's just whether or not you need an extensive separate legislation, together with a new bureaucracy, in terms of new bodies, new committees and a series of reports.

There are other jurisdictions all across this continent that have source water protection without something equivalent to Bill 43. They achieve it through fine-tuning of their legislation equivalent to our Ontario Water Resources Act. They deal with it through perhaps additional regulations under their environmental protection act. They might deal with it under their public utilities act or public water act.

There are other situations where you don't have to have an extensive budget, annual reporting and new committees being established. Basically, it's almost like a new level of government in terms of the controls, permits and reporting requirements that Bill 43 might be interpreted to require.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for being here today and for your presentation. You made very valid points, one being that we do not need this legislation. O'Connor recommended that it be done under the Ontario Water Resources Act and through the EPA. This level of bureaucracy is wasting money. Public Infrastructure Renewal has quoted \$18 billion for water infrastructure;

\$7 billion looks really low, then, when you're throwing that figure back.

Mr. Wilkinson: That's for infrastructure.

Ms. Scott: But it all leads to clean water, right?

So we don't need new bureaucracy. We should have used the existing tools. We've got a price tag from the present Liberal government of \$18 billion for infrastructure, which all leads to source water protection. But in your opinion, Frank, is source water protection of higher importance and good use of tax dollars with all the other infrastructure needs that have been assessed out there?

Mr. Zechner: Again, our message is that we have to look at this on a balanced basis. I've heard this around the table already this afternoon, and that is encouraging. We can't look to one issue only, to the exclusion of the others. We have to move forward on a balanced approach. Certainly the government has moved forward in terms of fine-tuning and enhancing treatment facilities, adding inspectors and fine-tuning those regulations, adding additional powers to the public boards of health in terms of reporting on these things, but again, the pipes are just as vital. If you have all this source water cleaned and you process it through state-of-the-art treatment plants, then put it through leaking and corroding pipes, where are you?

The Vice-Chair: Thank you, Mr. Zechner, for your presentation.

1240

DAIRY FARMERS OF ONTARIO

The Vice-Chair: The next presentation will be by the Dairy Farmers of Ontario. If they are here, they can come forward.

Mr. David Murray: Good afternoon, ladies and gentlemen. On behalf of Dairy Farmers of Ontario, I would like to thank the committee for inviting us to present our views on this very important piece of legislation. Dairy Farmers of Ontario markets all milk produced in the province, approximately 2.5 billion litres annually, from the 4,800 dairy farms in Ontario under the authority of the Milk Act. This generates a farm gate value of about \$1.6 billion annually, representing about 20% of the province's returns to agriculture. This makes dairy farming the largest single sector of Ontario agriculture.

My name is David Murray and I am a dairy farmer in Perth county. On our family farm, my wife and I milk about 40 cows. I also sit on the board of directors of Dairy Farmers of Ontario, representing the producers from Huron and Perth counties, and I am presenting on behalf of DFO today.

Dairy farmers understand the importance of the legislation and why they must be vigilant in exercising best practices in environmental stewardship. We are proud of the way that dairy farmers stepped up to the plate since the passage of the Nutrient Management Act, and we are certain that, with the right clean water legislation in place

and with the economic incentives that they need, they will step up again.

My presentation today has three sections. Firstly, we want to clearly express the support for the objectives of the Clean Water Act, while raising three fundamental concerns with the proposed legislation. Secondly, we want to make some specific recommendations. And finally, I will make some brief summary remarks.

Our first fundamental concern is that while we support the objectives of Bill 43, we view the current legislation as being overly punitive and not a positive improvement over existing legislation to improve Ontario's drinking water quality or risks. All impacted business and land-owner groups agree that it is vital to have a safe and reliable source of water in this province. At the same time, it is important to bear in mind that high standards for drinking water are already in place in Ontario. Further, there are laws in place to regulate and punish polluters. In this context, it is difficult to understand the business case and administrative need for additional rules, regulations and enforcement protocols.

Ontario's dairy farmers do not take exception to properly framed and enforced legislation to deal with proven polluters. Provincial Ministry of the Environment enforcement with trained staff following proper pollution abatement procedures under the existing Environmental Protection Act or nutrient management legislation has proven to be a workable approach.

Our concern is that the proposed bill appears to shift the burden of proof to the agricultural landowner. Under Bill 43, the process puts the onus on the agricultural landowner to satisfy the municipal permit official that the normal legal farm practice will not cause harm. Rather than creating a predictable, uniform and scientifically sound framework for effectively managing legitimate risks, the proposed Clean Water Act establishes a regulatory process that could result in overly risk-averse municipal permit officials applying the precautionary principle to place an unfair and unnecessary burden on the landowner.

In contrast, there is a need for targeted education, incentive and implementation procedures and protocols based on risk and linked to local source water protection plan objectives. It is disappointing that Bill 43 is entirely punitive and does not focus on the development of a practical and workable framework for making positive water quality improvement progress.

Our second fundamental concern is that Bill 43 is vague on key definitions and scope which, because of farming's large land base, places a disproportionate burden on farmers, and this burden could well grow over time. Agricultural groups are confused by the inconsistency between the broad purpose statement found in the Clean Water Act, which reads, "The purpose of this act is to protect existing and future sources of drinking water," and the assurances that the focus of the proposed legislation is municipal residential drinking sources. Further, our concern is that surface water intake zones could impact a much larger land area than the municipal wellhead protection zones.

The definitions of terms such as “significant drinking water threats” in Bill 43 are unduly broad and subjective. Our interpretation is that virtually all activities in a source protection area will be designated, at first instance, a drinking water threat. This definition fails to recognize existing approvals, guidelines or standards that govern normal agricultural land use. The resulting uncertainty and its consequent investment of resources to deal with any and all such threats is unreasonable. Agricultural producers within designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards.

Our third fundamental concern is that there remains a lack of commitment for fair funding principles. The implementation cost and the environmental human health benefits of Bill 43 are unknown and would appear to fall disproportionately on rural businesses and landowners. The bill appears to be structured so that all of the implementation cost is picked up by either the impacted municipalities or the impacted landowner. It is essentially a case of expropriation without compensation.

It is our position that Bill 43, as it stands, could have serious financial consequences for landowners, operating to effectively expropriate lands without any apparent compensation. There should be clearly defined protocols that source protection authorities and municipalities can use to negotiate fair solutions with impacted agricultural landowners. The concept of a provincially supported agricultural stewardship fund to assist impacted landowners and municipalities should be specified in the act.

The recommendations:

Our first recommendation to the committee is to reconsider the permit official approach in favour of a more proactive and positive approach that focuses on achieving the bill’s objectives. More rules, regulations and bureaucracy will not help to achieve source water protection goals. This approach appears destined for conflict. Rather, the focus should be on planning, education and financial incentives.

Dairy Farmers of Ontario agrees that it is vital to have a safe and reliable source of water in this province and commends the government’s intention to protect our water supply through Bill 43. At the same time, it is important to bear in mind that high standards for drinking water are already in place in Ontario. Further, there are laws in place to regulate and punish polluters. We feel there is a need for targeted education, incentive and implementation procedures and protocols based on risk and linked to local source water protection plan objectives. It is disappointing that Bill 43 does not focus on the development of a practical and workable framework for making positive water quality improvement progress. Regulatory enforcement tools may be needed in some circumstances, but this should be as a last resort.

Our second recommendation is that funding issues need to be addressed in an equitable way as an integral part of Bill 43, as recommended by the advisory committee on watershed-based source protection planning from 2003. The advisory committee recognized that one

of the guiding principles for successful source water protection is cost-effectiveness and fairness. I read from page 4 of the advisory committee report: “Cost-effectiveness and fairness: The costs and impacts on individuals, landowners, businesses, industries and governments must be clear, fair and economically sustainable.” Dairy Farmers of Ontario believes that the issue of who pays must be dealt with up front and in a clear and transparent manner.

We believe that acting on these two recommendations would address some of the important concerns that stakeholders have about Bill 43 and greatly enhance the achievement of the shared societal goals that are the objectives of the bill.

In summary, Dairy Farmers supports the goal of clean water for everyone but has concerns about the approach being proposed with Bill 43. We think the approach is destined for conflict with orders and permits, permit officers, inspectors and enforcement officers, new municipal authorities, limited appeal processes and no financial assistance.

Our other concerns relate to a lot of uncertainty and vagueness around the bill, including how much land and where, what activities will be regulated, and who pays for implementation. We feel the government needs to present a more balanced approach that includes co-operation and team work with those who are likely to be most affected and addresses the need for financial assistance.

Thank you for taking the time to listen to our presentation. I am by no means an expert on Bill 43. I am a Dairy Farmers of Ontario board member plus a concerned businessman, farmer and father who has some concerns with the approach taken by Bill 43.

Dairy farmers have been, and always will be, good stewards of our land. We live on our land and our families drink the water from our own wells on our farms. The issues we have lie not with the concept, but with the approach of the legislation.

Thank you again, and I welcome any questions.

The Vice-Chair: Thank you, Mr. Murray, for your presentation. We’re going to questions now, starting with Mr. Wilkinson, the parliamentary assistant to the Minister of the Environment.

Mr. Wilkinson: Thank you, Mr. Chair, and welcome to my constituent Dave to Mr. Murdoch’s riding. Dave is a local dairy farmer in my riding of Perth–Middlesex, which happens to be number one in dairy production in this great country of ours.

Mr. Murray: Thank you for that recognition.

Mr. Wilkinson: We thought we’d throw that in there. All politics are local.

Dave, you will be glad to know that the minister was here at the beginning of the hearings yesterday. The need for us to move to the idea of risk management first and then orders as a last resort, for someone with a significant drinking water threat who feels that they should do nothing, really comes from a lot of great information that we’ve gotten from OFEC, OFAC and the DFO—all have been part of the consultations. So we appreciate that and we look forward to looking at amendments on the bill.

The whole bill is based on science because that is the underpinning of it. That's the work that's being done right now by the province of Ontario and we're picking up the total cost. But you go to the question—and this is the one we're talking about—of who pays. There are different models: It should be the person drinking the water; it should be the municipality; it should be the province. Ultimately, if we're going to ensure a safe supply of drinking water, with a multi-barrier approach, which is what Justice O'Connor told all of us to do, who do you think should pay?

Mr. Murray: When the benefits of clean drinking water accrue to society as a whole, then I believe that society should be paying, which is the government through our taxes.

Mr. Wilkinson: Right. And we've had some farmers who have come in and said, "Well, I'm willing to do my part." So do you see it as a—I know in Oxford they said the cost is quite minimal on the work they've done so far, which is quite progressive. Do you think there is a role for everybody to come together and just make sure that, as the costs become more than the ability of the person—that that's where it should kick in, or should it be a blanket program? Presumably, we have to deal with that. People, for example, on their other infrastructure have to pay. So where is the point where the province needs to come in, in your opinion?

Mr. Murray: I think the province has to be there right from the start.

Mr. Wilkinson: And there shouldn't be any cost-sharing with anybody else?

Mr. Murray: Everyone should be doing their share, but we do that through paying our taxes too. I think in the past, dairy farmers have shown that we are willing to go to the plate with the Nutrient Management Act and with the environmental farm plan. We do pick up our share of the cost as well, but it should be right up front so that we know where we all stand. If we had that \$120 million right up front, which would go to infrastructure, I think you would have uptake immediately. Otherwise, there may be some sort of confrontational approach.

Mr. Wilkinson: So after we get the science done, that should be—your opinion would be to just continue that on that part of it?

Mr. Murray: I would think so.

The Vice-Chair: Ms. Scott?

Ms. Scott: Thank you very much for your presentation today. You're right: There are the environmental farm plans, the nutrient management plans, and you've come to the table and you've met those plans, you've done your due diligence. So I compliment you on doing that, and all dairy farmers and all the farmers who have complied when they needed to.

We're concerned because if cows are deemed by this government as a significant drinking water threat, what impact is that assertion going to have on your good image, your marketing strategies with milk and dairy products?

Interjection.

Ms. Scott: Well, you're calling them. Cows and—

Mr. Murray: Considering that we produce nature's most perfect food, I would be quite astounded if that would even happen. I think we have always been good stewards of the land. We drink the water from our wells, we eat the food that we grow on our properties. I can't quite imagine that that would ever be the case.

Ms. Scott: But they're just saying that it is a threat. Cattle, farming, agriculture are threats to our drinking water. So there are two sides to the story. I just wanted to—

Mr. Murray: I hope they would know better than that.

Ms. Scott: So do I, but I just wanted to highlight that.

The Vice-Chair: Thank you, Ms. Scott.

Mr. Tabuns, are you ready for the question?

Mr. Tabuns: Thanks for your presentation today. Do you have a sense of the scope of costs that you talk about when you say there will be a financial burden placed on farmers? Has there been an analysis?

Mr. Murray: We haven't done an analysis. I can only imagine what might happen on my farm. We have a creek running through our property, we have a drilled well 150 feet deep which is still zero-zero, but that creek could be the turning point where it would cost me money inasmuch as I might not be able to use land within so many feet of that; therefore, I would need to go out and rent land. That's not significant, but it's not insignificant either, considering in our area land rent is over \$200 an acre. So it depends how wide that is. We don't know what the land area is. I think in some other instances the costs could be great just because of manure containment and where and when you can spread the nutrients. We always do a good job of returning the nutrients to the soil and doing it over again. So to restrict us in that, there's also a cost.

The Vice-Chair: Thank you, Mr. Murray, for your answer. Thank you for your presentation.

I want to thank everyone who attended with us in the morning session. Our session is over. We are going to recess from 1 to 2 o'clock. Thank you very much.

The committee recessed from 1254 to 1404.

The Vice-Chair: Good afternoon, ladies and gentlemen. Welcome back again to the standing committee on social policy. We are in our second day and second session of the day here in Walkerton.

COUNTY OF OXFORD

The Vice-Chair: The first presentation for this afternoon will be by the county of Oxford. If they are here, they can come forward to the mike. I believe you know the procedure. You have 10 minutes' speaking time and five minutes for questions, if you wish. You can start whenever you want.

Mr. Bill Semeniuk: Thanks very much. Good afternoon, ladies and gentlemen. My name is Bill Semeniuk. I am a councillor for the county of Oxford and also mayor of the township of Zorra, in the county of Oxford, in

southwestern Ontario. I am accompanied by Margaret Misk-Evans, senior planner for the county of Oxford.

The county's experience in source water protection spans the past decade, both locally and provincially, and includes representation on the technical experts committee. Since 1997, the county has done many ground-water studies, pilot projects and stakeholder consultations to advance a science-based approach to source water protection in Oxford. We find that the existing tools available to municipalities are inadequate to protect source water. Many of these tools would unduly affect the local economy. There need to be better tools available to municipalities to address threats. Provincial instruments also need to be available for source water protection. The two levels of government need to co-operate to achieve adequate risk management. There needs to be adequate funding for implementation and enforcement as well as protection from liability.

We believe that Bill 43 provides for better tools and also embraces a co-operative approach. Overall, the county supports Bill 43. Our comments today are intended to address remaining concerns. We have identified six key areas that require further attention in the bill.

Regarding municipal roles and responsibilities, the act proposes that municipalities are to make up one third of the source protection committee. Five of the 16 are to be municipal. In our opinion, this is not enough. It is our position that the source protection committee should be larger, or that out of the five municipal members, there should be at least one upper-tier representative for each upper tier in the source protection region. Upper-tier councillors can transfer information to their lower-tier counterparts.

The act also makes the source protection committee responsible for preparing the terms of reference, the assessment reports and the source protection plans, and prescribes that municipalities shall be consulted on these documents. It is very important to have the act provide willing municipalities with the responsibility for undertaking assessment reports and source protection plans for municipal water supply areas. The regulations should also ensure that technical assessments and source protection plans prepared by municipalities and council-approved are incorporated into the watershed source protection plan.

Interim permits and orders: Section 48 provides for a municipal permit official to issue an order for a risk management plan for high-risk activities in municipal supply areas in order to immediately reduce risks to drinking water. In doing so, municipalities are protected from liability. These measures are interim, because the source protection plan is not yet completed. The act needs to include criteria for defining what triggers early action under section 48.

Regulations and rules are needed to identify adequate interim risk management measures to reduce the risk to below "significant." Also, rather than having municipalities operate by order and permit, the act should allow the

voluntary development of a risk management plan on an expedited schedule. The resulting plan should be made binding by an agreement. The act should obligate interim action only for existing or historical significant drinking water threats, not future activities. The county agrees with the protection of municipalities from liability for interim measures and believes this should be extended to implementation and enforcement activities associated with the source protection plan.

Future activities: The reference to "future activities" is seen in many sections of the act. The term "future activities" needs to be clearly defined. It should not be used to imply a significant risk where one does not exist. It is unreasonable to expect municipalities and source protection committees to anticipate the range of chemicals that might be used in future at commercial and industrial establishments. The risk management should be based on hazards present at the facility at the time of assessment. The act incorporates a mandatory review at regular intervals. This provides for changes in activities or land use to be picked up in a future review.

1410

Implementation and enforcement: Section 19 of the act addresses the contents and objectives of a source protection plan, requiring that every significant drinking water threat must cease to be significant and that none of the possible future activities ever become significant drinking water threats. The primary tool for addressing these significant threats will be the risk management plan, implemented through a permit and order process. Municipalities are given responsibility for implementation and enforcement by permit officials.

We have already touched on our concerns about future activities. Other concerns that we have with implementation and enforcement include standardization, liability, cost and rigidity of enforcement.

A standard approach to risk management and enforcement is required to determine what actions are required to reduce the risk below "significant." This is important to ensure that similar actions are taken throughout the province for risk reduction and that all available tools are accessible, including provincial instruments where appropriate.

Further, regulations providing qualifications and training requirements for permit officials are needed. At a minimum, the province should commit to developing and funding a training program for municipal permit officials.

Considering the onus on the permit official to sign off on risk management plans, we suggest that permit officials be employees of the province rather than of the municipalities. This arrangement is similar to other legislation, such as the Nutrient Management Act and the Safe Drinking Water Act. Provisions could be made to delegate this authority to willing municipalities, with acceptable training and liability protection.

The use of a permit can address several areas where the planning process falls short, such as existing uses, ongoing management practices and monitoring, to name a few. However, a permit approach may be overly rigid and expensive to implement.

The permit system proposed by the act should be replaced with a negotiated risk management approach. Property owners assessed as “significant” should negotiate a risk management plan with the municipality and permit official. This plan would be bound by agreement, rather than a permit. The order powers should only be used as a last resort, if the owner failed to comply with developing a risk management plan or failed to enter into an agreement.

The act should also provide for a risk management plan to be revoked if a business isn’t following it. Once revoked, another plan could be renegotiated. This softer approach to enforcement should be available instead of immediately going to prosecution. There may be good reasons for the plan’s failure, such as a change in business, a new owner or financial hardship.

Financial support: It is Oxford’s position that the province should ensure that financial support is available to assist with costs associated with implementation and enforcement and to assist with the costs to property owners, farmers and small to mid-sized businesses for risk management.

Source protection may accelerate the need to address brownfields. Provincial funding for brownfield remediation required as a result of source protection is necessary, as is protection from liability for municipalities.

The county is a proactive supporter of source water protection, and we encourage the province in that regard. However, the province should proceed cautiously and ensure significant resources are allocated to the whole process to avoid undue hardship.

Private services: There is no provision in the Clean Water Act for wells and septic tanks to be disclosed upon transfer of property. The Clean Water Act should make a complementary amendment to other provincial legislation to enable disclosure, including the location of services on the plan of survey.

To summarize, the county is supportive of the Clean Water Act. The changes that we propose will assist in achieving a practical law that governments and conservation authorities can implement.

On behalf of Oxford, thanks to the committee.

The Vice-Chair: Thank you for your presentation. We’ll open the floor now for questions. We’ll start with Ms. Scott.

Ms. Scott: Thank you very much for appearing before us here today. You’ve made a lot of good points. I hope that you will bring forward amendments so that we can deal with them in clause-by-clause on September 11 and 12. We can help facilitate, if you need that.

Yesterday, in her opening remarks, the minister suggested that your county and the region of Waterloo can implement all the requirements of Bill 43 for the residential tax base charge of 75 cents or \$1.50 a month per household. Is she correct when she says that it’s fair to expect municipalities to pick up the implementation costs? Are those costs accurate? Can you clarify that a bit?

Mr. Semeniuk: Yes, and I appreciate your asking that question, because it has been brought to our attention. I’ll

hand that over to Marge. She has assessed some of the costs that we’ve entailed so far.

Ms. Margaret Misek-Evans: The costs that have been quoted are based on some information that we provided the ministry in 2004. I brought the summary table that I provided to them back in those times when that was requested. A lot of the costs are steady costs. Some of them are implementation costs, but of course we haven’t proceeded very far into the implementation venues, so it’s a very preliminary estimate.

We’ve done some good work in implementation through our clean water project, which is an incentive-based program originally initiated under the healthy futures funding. But when that was discontinued in 2003, the county continued it using its own tax-based dollars.

Some of the other costs that maybe drive up that household average are land acquisition costs for farmlands that we’ve purchased around one of our impacted well fields to gain control over the sensitive area and remediate the problem.

Mr. Semeniuk: And one area, if I can—just to respond further to that clarification on costs—the county has developed a fund called the community servicing assistance fund, where it basically garnishes \$10 a year on water. There are 53,000 municipal water users in the county. That goes into a fund to help offset when a community or an area needing service, say a water service—

Ms. Misek-Evans: —to offset the cost associated with providing that water service to them.

The Vice-Chair: Thank you very much for your answer. Mr. Tabuns.

Mr. Tabuns: Thank you for coming and making this presentation; it’s very useful. Two questions: Do you have a sense of what it would cost to fully implement what’s set out here in this act in your jurisdiction; and secondly, how would you deal with those requirements if funding were not forthcoming from the province?

Mr. Semeniuk: I’ll ask Marge to answer the first one.

Ms. Misek-Evans: Do we have a sense of what the full implementation costs are? Not particularly. We haven’t really sat down and done any hard estimates. We’re pretty practical in Oxford county. We use the existing resources where we can. If the permit official ends up being a municipal employee, then those will become probably part of our public works department, along with the sewer use bylaw enforcement officers. There might be some dual training there. So there will be some additional staff costs.

We’d much prefer the negotiated risk management plan approach, and we would like to also extend our clean water project, again hopefully with provincial assistance, to help offset the implementation costs of rural property owners. We believe that the technical assessment that’s envisioned under Bill 43 will really help us scope the areas that need attention and help us scope the significant threats and that those will not be high in number. We’ve done some of that preliminary work ourselves, and we’ve got a good sense that it will be pretty manageable for us. That will help to contain costs as well.

Really, the costs of not doing this are probably higher than the costs of doing it. In our experience with the stakeholder consultations—and the tools that we have to work with without Bill 43 are so blunt that you may have to turn development away in sensitive areas because you can't negotiate a risk management plan; you have no way of implementing a risk management plan with them. So the economic development cost of forgoing development in some of these areas is pretty phenomenal too. It is a trade-off. This provides us with so many more options to manage the risk and still have a viable economy.

The Vice-Chair: Thank you very much.

Mr. Semeniuk: I can—

The Vice-Chair: We are under strict time, sir; so many people.

Minister of the Environment's parliamentary assistant.
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Mr. Wilkinson: Just to continue on that train of thought, Your Worship, could you give us some concrete examples? You've said at the beginning that this is going to be the tool that's missing in your toolbox. I know you were heartened to hear the minister talk about how we're making sure that we're going to focus this bill on risk management, and then that's the way we need to approach people. We always, at the end of the day, have to be able to take action on for the public good, but we should start always with negotiating risk together with the property owners. Can you give us an example of where you think this is going to fill a gap, maybe an actual example of where you wish you had this bill?

Mr. Semeniuk: I was going to elaborate a bit. For the committee to understand, I am not only a rural mayor, I'm a farmer, and I run an intensive livestock operation within a wellhead-protected area. It was a concern for me whether my business was going to carry on. I reflect back to the way our nutrient management municipal bylaw evolved. The first part of it was source protection: identify the vulnerable areas and what activities would make that vulnerability. We found that everyone was targeting intensive livestock operations and that was the be-all and end-all for the nutrient management plan bylaw. But what was found was that service stations in rural municipalities or in small towns were actually the highest risk to the village drinking water. So all of a sudden everybody's thought process started turning around.

This is where I see the evolution going. You have to identify what your risks are, and then you go forward. I think this process will do that.

The Vice-Chair: Thank you, sir, for your presentation.

GREY COUNTY FEDERATION OF AGRICULTURE

The Vice-Chair: The second presentation will be by the Grey County Federation of Agriculture.

Welcome, sir. You may start when you are ready.

Mr. Allen Hughes: Thank you. First of all, my name is Allen Hughes. I'm president of the Grey County Federation of Agriculture. I have with me today Jacquie Hendry. She's from the Town of the Blue Mountains, where there are many questions about water-taking.

The Vice-Chair: Welcome.

Mr. Hughes: As I said, I'm president of the Grey County Federation of Agriculture, which represents the voice of about 1,500 farm families in the county who are members of the Ontario Federation of Agriculture. The Grey County Federation of Agriculture supports the position of the Ontario Federation of Agriculture and the Ontario Farm Environmental Coalition in regard to the Clean Water Act. I believe you received those yesterday. In this brief we will focus primarily on items of special concern to the Grey County Federation of Agriculture.

First of all, we wish to be clear that we are in support of the protection of water resources, while expressing some concerns and recommendations for the proposed Clean Water Act. Our interest in protecting water is not limited to keeping water clean but also in maintaining a sufficient quantity of groundwater to meet the needs of our farmers and our rural population.

Farmers as stewards of water: Ontario farmers and their organizations have long been recognized for their work in protecting the environment and water resources. After all, we live in the same area that our drinking water comes from, primarily wells on our farms. Some of the programs and initiatives that Ontario farmers have been involved with include best management practices, the environmental farm plan, stewardship councils and nutrient management plans.

Farmers are already subject to a long list of laws and regulations aimed at protecting the environment, including the Environmental Protection Act, the Nutrient Management Act, the Ontario Water Resources Act, the Fisheries Act, the permit to take water and the Drainage Act. The protection of drinking water has been the subject of many studies as well, the latest of which is the report on Water Well Sustainability in Ontario for the Ministry of the Environment, which was published in January 2006.

All this information is mentioned to show that farmers are well aware of issues around protecting drinking water and are already subject to endless rules and regulations, many of which have a financial impact. We understand that Bill 43 will supersede other provincial legislation. We do not wish to see precious resources dedicated to duplication or unnecessary regulation, nor do we wish to see further financial burdens placed on farmers for society's benefit.

With the purpose statement, which is "to protect existing and future sources of drinking water," we recommend that the purpose of the act be clearly limited to the protection of groundwater sources for municipal wells, as was suggested by OFA.

There are several definitions that seem to be rather vague in the act. These include "threat," "hazard," "pathway," "exposure," "risk" and "adverse effect." The Grey County Federation of Agriculture supports the definitions

proposed by the Ontario Farm Environmental Coalition for the above words.

We will now consider conservation. The proposed legislation covers the protection of water resources from a quality perspective but does not mention the need to preserve quantity as well. Our common law rights to water assume an inexhaustible supply of water, but we now know that this is a questionable assumption.

Urban sprawl, climate change, water bottling, recreation, expanding industry and commerce, as well as the needs of agriculture, are all putting new pressures on water resources. Although hydrological studies have been done, there is much that is unknown about the ground-water supply, and we have insufficient data to prove that an aquifer can withstand current or new levels of water-taking. Who will compensate farmers and rural residents when their wells go dry due to the activities of others beyond their control?

GCFA recommends that the Clean Water Act recognize and support the need for water conservation.

We will now look at education. The goals of the Clean Water Act will require the involvement and support of all segments of society, including those who use water for recreation, commerce, industry and agriculture. The efficient use of water, as well as the reduction of contaminants resulting from various uses, can be improved by educating those who use water resources.

The Grey County Federation of Agriculture recommends that funding for research, education and awareness be recognized as an important component of the protection of water quality and quantity.

Permits, inspection and enforcement: We agree with the concerns outlined by the Ontario Federation of Agriculture and the Ontario Farm Environmental Coalition in their submission, and we are opposed to a permit system for agriculture. We believe that a building inspector approach would not assess all the elements related to drinking water quality and quantity.

Land that is identified as carrying minimal or low risk for a municipal well should be subject to a stewardship program that provides funds to landowners to adopt protection strategies. This would direct resources toward more sustainable results than an inspection system.

Where serious threats to the municipal drinking water system exist, ownership of the subject land by the municipality would remove the need for permits, inspection and enforcement regulations.

The Grey County Federation of Agriculture recommends that municipalities be required to purchase high-risk wellhead protection areas and that stewardship programs be established to assist in protecting lower-risk lands.

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On compensation, and we've heard about this many times this morning and this afternoon: As the primary landowner group to be affected by the Clean Water Act, farmers are concerned that land will be taken out of production or restricted in use, meaning that we will bear additional costs that will bring no improvement to farm

income. It is unacceptable to expect farmers to pay for benefits to society with no compensation. In that, the Grey County Federation of Agriculture agrees with the position of the OFA and OFEC to remove subsection 88(6) from the act and to include a mechanism for funding that will support the objectives of the act.

In conclusion, the goals of the Clean Water Act can best be met by education about water quality and quantity protection and preservation for all users and by providing financial support to the landowners affected by restrictions.

Thank you for the opportunity to present our views here this afternoon.

The Vice-Chair: Thank you for your presentation. Now we'll open the floor for questions. We'll start with Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming in today and making this presentation. If funds are not provided, if we actually carry through on this bill and there's not compensation, what do you think that will mean in terms of actually delivering on the goals of this bill?

Mr. Hughes: First of all, I agree with the stewardship approach to this. I think as involvement with the environmental farm plans—a small incentive there has done great things to improve the quality of many different areas that they're involved with. I think it would not work so well if there wasn't some funding available.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, Allen, and thanks for supporting the OFA. Ron made a great presentation yesterday. We're hearing this consistently, and we appreciate that. I know you've been here, and that input has helped us clarify on biosecurity and on risk management as opposed to permitting.

I couldn't agree with you more, being the member from Perth—Middlesex, about water and about making sure we know how much water is available so that our wells don't go dry.

Just so you understand, in the assessment report—and the province is paying for this right across the province—they have to do a number of things. They have to set out a water budget for each watershed that identifies how the water comes in and leaves the aquifer, how much is going in, how much is going out. It quantifies the existing and anticipated amounts that would be taken out through a permit to take water. It also quantifies the other amounts that would be coming out through science. Then they have to develop a budget. I can't think of anything that would help farmers more—as a community, all of us drawing on the same aquifer in regard to groundwater, that we know how much is there. I think that's your point. We can't have this assumption that it's a limitless resource and people should be able to tap into it and not understand that. That is the work that's being done over this five-year period. I think it's going to help all of us make sure that we're keeping this precious resource and that we're not squandering it.

Mr. Hughes: Jacquie is from the Blue Mountains and is a relative expert on quantity of water.

Ms. Jacquie Hendry: You're right, and we need to put the funding in place to make sure that we know the aquifer can withstand the water-taking and all variables. However, it's only been 10 years at most that anything has been going on to prove whether the aquifer can withstand the water-taking. On the other hand, we have the MOE handing out water permits. I think we're up to about 350,000 litres a day in our area. That's a lot going out, and there's no research going in and no ways and means for the rest of us who may have wells go dry. We have no way of knowing what our security will be. It can devalue our land. We all know water is what keeps us going here. It's our very existence.

Mr. Wilkinson: This is going to make it the law.

Ms. Hendry: It's going to be the law.

The Vice-Chair: We move to Mr. Murdoch.

Mr. Murdoch: I would just like to ask Mr. Wilkinson: What law are we making now?

Mr. Wilkinson: Just in regard to the assessment report. If you read the bill, of course, in the assessment report that will be required there are a number of things that have to be done, including a water budget for all of these different watersheds in the source water planning authority. It has to quantify, based on the science that's being paid for by the province right now, how much water is going into the aquifer, how much is coming out, who's drawing on it. To your point, we can't just assume it's an inexhaustible supply and we need science to get at this so that the decisions are being made on sound science as we share our common aquifer.

Mr. Murdoch: It's not going to take care, though, of people who are taking the water now, and it's not going to stop people from taking water. So you're misleading us here a little bit.

Mr. Wilkinson: Actually, the Clean Water Act has primacy because that's also in the bill, in the Clean Water Act, and that would make it the law.

Mr. Murdoch: I understand that.

Just don't get fooled by this. It's not going to stop people from taking water, so don't let them fool you a little bit.

Since this is an act for clean water for everybody in Ontario, which we all want, the problem is, they don't say who's going to pay. As you know, in our area in rural Ontario, we don't have the ability to pick up on taxes as much as they have in some other places. But you are agreeing, then, that maybe the province should be picking up the bill for all the regulations we're going to have here. Is that right?

Ms. Hendry: I agree.

Mr. Hughes: Yes, I agree totally with that too.

The Vice-Chair: Thank you very much for your presentation.

TOWN OF GODERICH

The Vice-Chair: The next presentation is by the town of Goderich.

Welcome, Your Worship. You can start whenever you want.

Mr. Deb Shewfelt: Thank you, Mr. Chair. I'm Deb Shewfelt, mayor of Goderich, and actually the past chair of the Ontario Municipal Water Association. Although I'm not an engineer, I'm not a scientist, I'm not a planner, I've had some front-line experience with water and with the community, and I certainly come here to support this legislation. Being involved with the OMWA, I've had many meetings with the Ministry of the Environment, and I think the time for talking should be finished and we should implement and get the plan in place.

I'm not going to touch on the technicalities. I think that Oxford and some of those people with those resources have touched on some of the problems, but I'd like to indicate that we as a community in Goderich feel that we're leaders in source protection, because for the past five years we have implemented a plan to separate storm sewers and to stop many bypasses, 40 to 60 a year, of raw sewage going into the lake. I'm happy to report—after four or five years, at our own expense—that we have in the last five months no bypasses. We were fortunate to get a COMRIF grant to do some more work at the sewage plant, which I think assures that we are showing great protection for our system.

But I want to present you with a problem, because I think you're going to see some problems with implementation. I think they're problems that we can deal with.

When we did the E. coli testing on the bypasses, we had a very smart engineer, and he also did testing on the Maitland River, which flows by Goderich into the lake. I think you're all aware that we take our water from Lake Huron. In his report, he indicated that the Maitland River is a principal contributor of E. coli by a factor of more than 9,000 times the normal plant effluent, and more than 600 times when you add everything in. So therein lies a problem. We do lie at the end of the watercourse in the Maitland Valley watershed, and when it comes to funding, should the people of Goderich have to fund that? I just ask you that question. I ask you to think about that. I think you'll run into these situations.

Again I say, pass the bill; let's get on with it; let's get the planning done. I know that the source boards are sort of sitting in limbo. They'd like to appoint their committees and I think are reluctant to do so until it goes ahead.

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There are some basic philosophies that we need to go back to. I'd just like to quote from page 80 of the second O'Connor report. He talks about a local planning process "to ensure that local considerations are fully taken into account." Then he goes on and talks about that participation. I think the act has got that covered. I think we need to do it ourselves. We need to move forward. We need to try and get along. We've had many meetings over the past five years on pollution along the Great Lakes and we've met with farmers. I have to tell you that some of the meetings at the start were pretty nerve-wracking. But as we advance, now we're working together to try and get this corrected.

Just in summary, because a lot of it has been said—I read the OMWA-OWWA report that was presented yesterday, and they cover a lot of things. The philosophy—this is from the Pollution Probe booklet on source protection, and I think they hit it right on:

“Economic Health

“While there are costs associated with protecting water sources, they are investments that serve to generate economic vitality and growth. Communities with clean water sources attract human settlement, development and business.”

They go on to say, and there’s a quote from the United Nations—I know there are a lot of numbers and there’s a lot of crunching, but we shouldn’t lose sight of the basic philosophy:

“Future Generations

“Our actions today affect the quantity and quality of water available for future uses. The United Nations warns that if current trends of wasting and polluting freshwater continue, two out of every three people on Earth will suffer moderate to severe water shortages in little more than two decades from now. It is imperative that we take measures to protect water sources today.”

Finally, I think we have to look at maybe sharing these costs. We’ve funded our work, which will be \$3 million to \$4 million from sewage and water routes. I think that’s one way. I think the polluter has to pay. I think there have to be some tax dollars, and maybe they should come from the three levels.

I thank you for giving me some time. I certainly want to support both the Ausable Bayfield Conservation Authority and the Maitland Valley Conservation Authority as they form the board, and we’d like to move forward.

The Vice-Chair: Thank you, Your Worship, for your presentation. We now open the floor for questions, if you don’t mind.

Mr. Shewfelt: Not at all.

The Vice-Chair: We’re going to start with the parliamentary assistant to the Minister of the Environment.

Mr. Wilkinson: Welcome, Your Worship. Thanks for coming, Deb; compelling testimony. As someone who’s at the other end of the Maitland in my riding, up near Listowel, I have two comments. I think you’re right: Ausable Bayfield and Maitland are together from an authority point of view, working together. That website that they have—my property, our water—just nails it right down. I think they’ve had a lot of success with their farmers. But you’re right: It does take a while for people to get used to each other and get that trust required to work together as a team, all the people drawing from the same source of water working together.

I know at the other end of the Maitland—you’re talking about being at the bottom end—the work that’s being done about reclamation of stream beds and all that type of stuff that can use natural ways. Do you see a way of ensuring that all the people on that watercourse have an opportunity to share the burden of trying to reclaim that, to keep that river clean and use natural ways along the watercourse, to use Mother Nature to keep that water

healthy before it gets down to you and then into Lake Erie?

Mr. Shewfelt: I think there are certainly some simple ways. We’ve had some stewardship programs that work. We did one, in fact, in Goderich on the lake bank. We did it all with natural resources, and surprisingly it works.

I think the important part is when they pick the committees. A lot of time it boils down to who you get in the local community who can drive this. I think that’s really important, that we get people.

As I said before, we had quite a challenge from Port Albert to Grand Bend and decided to move ahead on our own on that. Very controversial and very confrontational at the start. I remember meeting 60 people in Clinton. It was heading the same way, and finally I said, “Hey, if there’s anybody here who thinks they’re not part of the problem, why don’t you leave?” Do you know what? Nobody left.

We’ve got to work together on it. There’ll be some concerns, as I point out, on the Maitland River, which is a huge concern when you see the numbers on the E coli. We’ll tackle that. COMRIF worked well for us: one third federal, one third province, and we put the sewage fees up last night at council, so we’ll get it paid for.

The Vice-Chair: Mr. Murdoch?

Mr. Murdoch: Welcome to Bruce county.

Mr. Shewfelt: I was born here.

Mr. Murdoch: I know.

Here’s the problem we have. Most of this thing we can agree with: “Let’s get on with the bill and let’s get it going.” That’s why we’re having the hearings, so people can bring in some of the little areas they’d like to tweak and change a little bit. The problem is that there’s nothing in there about the financial costs. You’ve mentioned that, and should Goderich pay for everything coming out at the end of the Maitland? Well, no; that wouldn’t be fair. What we’re saying, in opposition, is that we just maybe don’t trust that the government is going to put something in there that’s proper. There’s nothing in the bill that says anything about the financial compensation and how it’s going to work. As you know, we don’t have the population in rural Ontario that can afford all the things they may want, all the regulations they may put in there. So we’re saying, “Let’s put something in there.” And most of the people today have said, “Hey, the province should pay,” because this bill is meant for clean water for everybody in Ontario, not just for Toronto, London or anywhere else. It’s for everybody. The way everybody pays is, the province comes up with the money. So that’s the problem we’re having here.

I agree with you that everybody wants clean water and let’s get on with it. But the province could easily put in, when these regulations are put in force, who will pay for it, or is there a hidden agenda there and they’re going to dump it onto the municipalities? Because in the bill it does say that municipalities will be able to enforce it. Well, the ministry already has the Ministry of the Environment to go out and enforce rules now. Are they secretly going to cut the ministry out and force this all

down to municipalities? Then you might have some more to say about it if Huron has to pay for everything down there.

Mr. Shewfelt: If I can reply, I indicated how I thought it should be paid for. I think the feds should even be in on it, because that's what they do in the States. But I think what'll happen, if there isn't some lead, is that issues such as the Maitland River probably will not get done or they might get done in court—

Mr. Murdoch: And that's a catastrophe.

Mr. Shewfelt: I believe that the MNR probably has some responsibility, so I'll see you in court.

Mr. Murdoch: They've taken away their responsibilities for rivers. They don't look after rivers anymore.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you very much, Mayor, for coming in and making this presentation. One of the issues that has come up regularly is this whole question of incorporating requirements for water conservation and efficiency into the act. Is that something that you and your council would support?

Mr. Shewfelt: I guess what you're saying is that we'll legislate water meters. Or is it broader than that?

Mr. Tabuns: Broader than that.

Mr. Shewfelt: If you step outside the box, I think there are some other areas that we could look at to conserve water and to probably reuse that water and treat it out of the sewage plant. I think that's a great resource, and I understand that in BC they maybe have some ideas of how to use that.

So yes, we'd support it, but keep it broad. We don't have meters. We probably will end up with meters. But I just think there are other ways to conserve.

Mr. Tabuns: I'd agree.

The Vice-Chair: Thank you, Your Worship, for your presentation.

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ONTARIO VEAL ASSOCIATION

The Vice-Chair: The next presentation will be by the Ontario Veal Association.

You can start when you're ready.

Ms. Judy Dirksen: Good afternoon, everyone. On behalf of the Ontario Veal Association, we'd like to thank the committee for inviting us to present our views on Bill 43. I'm pleased to see that my soon-to-be-MPP-through-redistribution, John Wilkinson, is on the committee. I think it's going to look interesting on a business card. He has spent considerable time talking with farmers and knows that this act is not being well received in rural Ontario.

My name is Judy Dirksen, and I'm the president of the Ontario Veal Association. My husband and I own and operate our farm just south of Harriston with the help of our grown children. I also serve as municipal councillor in the town of Minto, which is located in the northwest corner of beautiful Wellington county. Joining me today

are Chris Attema and Jamie Boles, who are staff of the livestock organizations.

The Ontario Veal Association is a producer-run organization that is dedicated to representing the needs and interests of both grain-fed and milk-fed veal producers in Ontario. I encourage you to visit our website to learn more about our industry and have a look at some outstanding veal recipes. Remember, when you buy Ontario-grown products, an Ontario farmer thanks you.

This issue of clean water is interesting to me, not only from the view of the Ontario veal producers that I represent here today, but also as a farmer and in my role as a municipal councillor. It's also important that you know that I am not against clean water, and I am well aware that keeping water clean is a big order and deserves our attention.

There are several concerns that I would like to bring to you, and changes that I would ask you to consider. If you please, I want to share with you some public statements about your government's proposed Clean Water Act.

Quoting first from an MOE fact sheet: "Once the community's source water protection plan is in effect, an industry who wants to engage in an activity that has been identified as a significant drinking water threat within a designated municipal wellhead or surface water intake protection area would first have to seek a permit from the municipality or submit a risk assessment that shows that the activity is not a significant threat. The permit would require the industry to take appropriate measures to ensure the activity does not pose a significant threat to a drinking water source. Those who fail to comply with a permit could face fines."

Again, from an MOE fact sheet: "Permit officials and permit inspectors would be able to enter properties to collect information and issue orders to enforce permits. They may also cause work to be done if the property owner fails to do so, and recover costs from the property owner."

These quotes cause me grave concern. I submit to you that there is much apprehension by both municipalities and rural landowners. Imagine, not having committed a crime or done anything wrong other than being inside one of the lines that you plan to have drawn on a map, and receiving notice or an order that could cost who knows how much to comply with? There's really no money in rural Ontario for any of this.

Here's what the Ontario Chamber of Commerce says about the permit officials scheme: "The proposed Clean Water Act includes broad powers for municipal permit officials without appropriate technical, political or fiscal accountability. The permit official has the authority to enter an individual's property without notice or consent. They also have the authority to order powers to compel compliance, cause work to be done where a person fails to comply with an order, and to recover costs directly from the landowner...."

"The OCC is concerned that the legislation presents significant power to one individual with no requirement to consult with landowners or to consider the technical

feasibility or cost of permit authority conditions or amendments. The result of this could lead to a lack of transparency in the system. The OCC recommends the objective of this legislation should be based on co-operative solutions and negotiations with impacted land users; therefore, permit officials should have specific responsibilities and duties towards landowners governed in legislation.”

The municipalities of Ontario had this to say in their Environmental Bill of Rights submission: “The most significant new direction relative to implementation is in the mandatory requirement to regulate activities and land uses. Part of this new mandate is the requirement to establish permit officials, with the power to regulate activities....

“Although the resource and financial impact of the above requirements have not been assessed, we anticipate the costs will be substantive due to the creation of a system to review and approve applications, undertake inspections, issue orders and undertake legal proceedings.... [A] municipality has two options available to it:

“(1) maintain in-house expertise to properly review and approve applications to ensure measures have been implemented to protect sources of drinking water from possible threats; and

“(2) devise a system whereby applicants are required to provide this analysis to the municipality, along with funding to permit the municipality to obtain peer review of the analysis.

“With respect to the second, the costs will be transferred to the customer and undoubtedly, there will be some opposition to these added user costs.”

AMO also sums up by saying, “The proposed new unfunded mandate around source water protection is a most serious concern to municipal government.”

As you know, these words are not mine. They come from AMO’s EBR submission from February of this year. All of these comments are made by other stakeholders who share our concerns in the agricultural and rural communities. We are not alone in voicing our valid criticisms.

Last week, I attended the AMO convention in Ottawa and saw many of you there. During the ministers’ forum, Minister Broten stated that the “costs for implementation in Waterloo and Stratford have been manageable.”

I suspect that in the final accounting, there are some real challenges associated with the implementation in these locations and, like most rural municipalities, the government is creating a real nightmare with this new approach. Unlike the county of Oxford, the town of Minto has a population of only 8,500 persons. What will the per capita cost be in Minto to comply with Bill 43? I believe Minister Broten also stated in Ottawa that Bill 43 is the “first phase of protective legislation.” If the minister was here, I would like to ask, “What will be next?” Some 274, or 61%, of municipalities in Ontario are like Minto and under 10,000 persons. Using a hardship-case situation will no doubt be offensive to a large percentage of the province.

Let me tell you more about our concerns in agriculture. The proposed Clean Water Act legislation goes beyond reasonable, and the precautionary-principle-based regulation shifts the burden of proof from the provincial regulator to the agricultural landowner. Provincial regulators are charged with the responsibility to scientifically demonstrate an adverse effect from an existing normal farm practice. Under the Clean Water Act, the process is reversed and the agricultural landowner must satisfy the municipal permit official that the normal, legal farm practice will not cause harm. Rather than creating a predictable, uniform and scientifically sound framework for effectively managing legitimate risks, the proposed Clean Water Act establishes an ill-defined regulatory process that could quite likely result in overly risk-averse municipal permit officials inappropriately applying the precautionary principle to place an unfair burden on the landowner. Placing this level of scientific and technical responsibility and legal liability at the municipal permit official level is inappropriate.

The concept of fair funding is not about rewarding polluters. Protecting potential drinking water threats means protection from activities that have “the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water.” Agricultural producers within designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards. Under these circumstances, competing jurisdictions and stakeholders favour establishing fair and reasonable cost-sharing and/or compensation.

From a municipal perspective, these valid questions and concerns need to be addressed by the government in the amendment phase during your clause-by-clause review.

Before I get to suggested amendments, I want to read one final set of quotes by the Association of Municipalities of Ontario:

“As it currently reads, the province, by virtue of its decision-making in all aspects of the source water protection plan development, has the full ‘ownership’ of the source water protection plan.

“Municipalities cannot be expected to readily raise the funds required to cover the potential costs of new requirements, in addition to the existing commitments, from user fees and property-based assessment. This is an area where implementation, secure funding and integration of provincial policies and directives must be cohesively developed. AMO did not see that kind of appreciation from the construct of the proposed legislation.”

In conclusion, four key amendments are recommended by OFEC:

Expand the purpose statement of the Clean Water Act to clearly scope the objectives in the context of multiple barriers of protection; limit the scope to municipal drinking water; and recognize the need and value of an agricultural stewardship fund.

Clear and specific criteria must be developed for drinking water threats and significant drinking water threats.

Rather than a permit official, agricultural source water protection goals could be co-operatively achieved through an agricultural risk management official.

Remove subsection 88(6); it is crucial to replace this section with clearly defined protocols for source protection authorities and municipalities to negotiate fair solutions with impacted agricultural landowners.

I'd like to thank you for your time and attention and for the opportunity to speak to you today.

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The Vice-Chair: Thank you very much for your presentation. We'll start the questions with Ms. Scott.

Ms. Scott: Thank you very much for appearing before us today and for the excellent presentation. You hit on numerous points. I'm going to just narrow it down. You mentioned about having to pass on the costs. How exactly would veal and other livestock and crop farmers pass on the additional costs that could be associated and will be associated with Bill 43, as it stands, to the end customer; or are you, as producers, going to have to swallow those costs?

Ms. Dirksen: As I see it, we would have to swallow those costs, because we're completely price-takers, so we get what the market can bear. We have no way to pass on any costs to the end user now. This is just one more cost, one more hardship for the rural community. Until we figure out a way to make primary agriculture profitable, I don't see how we can add one more thing to the cost.

Ms. Scott: So you'll be going out of business. We'll lose more farmers.

Ms. Dirksen: I think so, yes.

The Vice-Chair: Since Mr. Tabuns is not here, we can move to the parliamentary assistant.

Mr. Wilkinson: Chris and Judy, thanks so much for coming in and for your positive comments. The questions I had—we just had the mayor of Goderich and the mayor of Zorra here, and they were talking about how they've been moving ahead on this on their own. What they're telling us is that they've done this work; it has been borne by the local people in a sense for the common good of all the water they're drinking. So if we turn around after they've done that work and then bring in something that would put in a new system of compensation, would that be fair to those people who have already done this? I guess it would be just a question of fairness.

Ms. Dirksen: Sure. In Minto, we have done an I&I study, and we're spending a great deal of money right now in one of our—we have three water systems, actually, in Minto. Less than 6,000 of our 8,500 population actually use the water there, but we're doing a great deal of work on our water and sewer systems. We're not as fortunate as Mayor Deb Shewfelt in Goderich to win a COMRIF grant, so that makes a pretty big difference. But that's another subject for another day. We are doing that, but this goes beyond that, from what I can see. What we are doing is—we feel it's band-aid, we feel it's stopgap

solutions. We know that we need to be doing more, and there are no dollars to do it.

Mr. Wilkinson: The minister has indicated we're looking at being able to go to risk management as opposed to permit official as a way of really addressing a lot of those concerns you've raised. We appreciate that feedback.

Ms. Dirksen: And I would encourage that.

The Vice-Chair: Mr. Tabuns, you get a chance to ask a question.

Mr. Tabuns: Thank you for coming and making this presentation today. One concern that comes up is this whole question of funding support for the agricultural sector. Can you speak a bit more about whether or not funding might actually help deal with a lot of your concerns with regard to this bill?

Ms. Dirksen: I don't know whether you heard Laurie Scott's question or not.

Mr. Tabuns: No; I'm afraid I was out.

Ms. Dirksen: Okay. I'm thinking it's kind of the same question, and I'm not sure I can expand on it any further. The fact of the matter is that primary agriculture is not very profitable, and until we fix that problem in Ontario, I don't see how we can add any more regulation and legislation that costs money, because there's no way of passing that cost on to the consumer. And it's certainly for the public good.

The Vice-Chair: Thank you for your presentation.

CONCERNED WALKERTON CITIZENS

The Vice-Chair: The next presentation will be by Concerned Walkerton Citizens.

Welcome to the committee. I believe you know the procedure. You have 10 minutes' speaking time and five minutes for questions. You can start whenever you are ready.

Mr. Bruce Davidson: All right. I'm Bruce Davidson, vice-chair of the Concerned Walkerton Citizens. Beside me is Ron Leavoy, the chairman of our group.

I want to just give you a little bit of background about our group and how we were formed. We were formed in response, of course, to the Walkerton tragedy and really mandated with the questions of the community to find out what caused this tragedy in the first place, and then, after experiencing the absolute horror of what happened to this community, how we could prevent this from happening again. Since that time, our mandate has grown, at the request of other groups, tremendously.

We called, initially, for the inquiry into Walkerton. We were granted standing in all phases of the inquiry. We called for a comprehensive health study, which was undertaken. Ron has participated in the search for new water for the community. I participated in wellhead studies to see how we could protect the wellhead. I have been appointed as liaison between the class action proceeding and the community as we have worked through that procedure. My wife is on the emergency management committee. We have presented educational semin-

ars to health and public water management in, I believe, seven provinces now, and that has worked extremely well for them. We have also been on the boards of the Walkerton Clean Water Centre. Ron is on that board. I'm a member of the Canadian Environmental Law Association board. Last year we hosted a very large water and public health symposium in Walkerton that was intended to really bridge the gap between public health officials and officials looking at water issues across the province and across the country.

We wish to express our full support for the bill. There are some changes that obviously need to be made to enhance certain parts, and we want to touch on those areas, but we think the time has come to move decisively to protect the water and give municipalities and various other agencies the tools they need to make sure that we prevent this kind of tragedy from happening again.

I'm not going to go into tremendous detail on these, because you've heard a lot from other groups, but I'm just going to reinforce our support for them.

We are in favour of:

- the precautionary principle;
- meaningful involvement of First Nations;
- the universal protection of drinking water sources in all of Ontario; and
- sustainable funding measures. I think that's so important.

When I hear the debate going back and forth about who pays—we don't have public transit in Walkerton. I don't remember the last time I took a subway in Toronto, but in this room, there are people who take the subway in Toronto every single day, and they make my life better and they make my life safer. Who pays? We all pay. Toronto and every large city in this province need to pay to protect our water. We all benefit from it, and that should be the end of the story: We all pay.

In terms of looking at meaningful education, which I'm going to touch on in a little bit more detail shortly, I think that in order to embrace the new regulations, education is absolutely pertinent. So let's start looking at the cost of getting it wrong, because we've heard a lot about the cost of protecting water and what it's going to cost, a lot of numbers being bandied about. I heard a question earlier this morning about some numbers on that.

If you look at the Walkerton inquiry—and I believe it was Dr. John Livernois from the University of Guelph. He wrote a report which was commissioned by Justice O'Connor. His early estimates—we have a chart on that which we could probably provide you with—were about \$65 million, but with a long-term cost of about \$150 million. That's what we're looking at for getting it wrong in one community of 5,000 people. Imagine if this happens in other communities. The cost of compensation to citizens here, if this were to happen again, would absolutely dwarf the cost, because no one could claim they didn't know.

In terms of private insurers, I think if you do the investigation, you'll see that the private insurance portion

that the municipality and the public utilities commission had paid for a very small part of that tragedy. The taxpayers of Ontario bear the bulk of the cost when something like this goes terribly wrong, and there's no escaping that.

Let's look at what happens to the reputation of a community. Our community was absolutely shattered by this. We've taken six years, and we have clawed back to be stronger and better than we ever were before. I believe there's not a storefront downtown that is unspoken for; housing prices are higher than they ever have been. I would suggest to you that the main reason that has occurred is because this community, along with the province, has taken great pains to re-establish confidence in the management of water, from the way we're looking at the source to the way we're producing it through our municipal management to our customers. That's extremely important.

The reputation of the government: We heard today that all you have to do to get clean water is stick a pipe in the ground and clean water magically flows out. If that's the public perception and the province is at the helm when the water goes wrong, what happens to your reputation? They won't believe you can do anything if you can't manage the water. It's, in their mind, a simple matter; it's not.

1510

The mayor tells me that the cost of municipal insurance in Walkerton is three times higher now than it was before the tragedy—a huge burden. The human cost has been devastating: thousands made ill, some permanently; seven dead, at minimum. The conditions we're looking at are diabetes, reactive arthritis, post-traumatic stress, irritable bowel syndrome, hemolytic uremic syndrome, high blood pressure. These are not trivial matters and, in some cases, will be lifelong conditions.

To give you some sense of what it means on a more personal level for people in this community—most of us are well, but there are a number who still struggle—there's a woman in Walkerton who suffers from irritable bowel. She has severe attacks about every six weeks. When an attack strikes, she will go from feeling reasonably well to feeling completely debilitated and ill within a few moments. By the time she calls her husband, who lives three minutes away from her workplace, to pick her up, she cannot stand up on her own and all the colour is washed from her face. By the time he gets her home, he'll assist her to get to the bedroom, where she will writhe in agony for two to three hours before literally passing out. That's my wife. There's a man in town who is now suffering from diabetes and high blood pressure, who had no history of it before and struggles with it. That's the gentleman beside me. There's a young boy in town who, two years ago, found one of his feet became quite swollen for no reason. He was taken to the hospital. They diagnosed it as gout symptoms. According to the doctor, they have never diagnosed it in someone that young. That's my son.

This is a small taste of the type of ongoing misery that people live through. We've pulled up our socks and we

are going and we're fighting and we're carrying on our lives, but imagine the cost in the future if some of these diseases get worse. You can't estimate a cost for that. So these are things we have to look at.

If you don't think it's worth protecting our water and spending the money, ask the young boy in town who lost both his kidneys; ask his parents about the hell they've been through. He nearly died, and his kidneys are not expected to take him through to adulthood. These are not trivial matters. We have to take the time to ensure that these types of things don't happen again.

In terms of legislation, you cannot legislate enthusiasm for a law; you can't make people do it. But where we have the ability to do that is through education. We are suggesting that we embark upon an aggressive education program whereby we don't just go to municipalities and to farmers and to First Nations and to cottagers and all the stakeholders and put a series of facts that they have to comply with in front of them, but rather we blend that technical information—and I've done this in several provinces and we, as a group, have—with the human impact, thereby resonating with those people on multiple levels so that they understand that they are complying because there is a reason to comply: to protect their own lives and their own health.

In closing, I would suggest to you that our children are going to face challenges in their lives that we've never considered. We have no idea what they'll face. Let's work collaboratively to make sure lethal water is not one of those challenges. I thank you for your time.

The Vice-Chair: Thank you very much for your presentation. We'll start with a question from Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming and making this very, very strong presentation. You have certainly made the stakes clear, and they're on the table.

I'll ask a question, but I have to say that I was in Holland at a conference shortly after what happened in Walkerton, and people there were asking me about this. They could not believe that it had happened in Canada.

That being said, you've suggested a number of changes to this bill: the precautionary principle, funding, inclusion of First Nations. How substantially do you think this bill will be weakened if those changes are not incorporated into it?

Mr. Davidson: I think you have to look at the name of the bill. Are we going to ensure clean water if we make some mistakes and rush to allow things that should not be allowed? I am not a scientist. I can't tell you what those activities might be. The key seems to be if we can fund it and if we find, through science, that there's something, in terms of an activity, that is risky and should not be allowed to affect a watercourse—and then I think we cannot vilify any industry. We cannot vilify our farmers. As a province, we have to support agriculture and support the stakeholders who are going to be affected. You couldn't walk into my house tomorrow and tell me I can't do massage because it's hurting the neighbour and you've found something out suddenly. We can't do that to the farm community either. I think we have to have

those steps in place, but we cannot beat an industry to death that is hanging on by its fingernails.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Ron and Bruce, thank you so much for coming. You have given the most compelling testimony for this committee that is dealing with this.

I do want to say, as you've talked personally about the tragedy, as you know, there has been good that has come out. On behalf of my family—we live in Stratford and we had a water emergency, and because of the hard lessons learned here, our community was able to respond to that and avoid a similar tragedy. So I just want to say, as a parent myself, that I know you're going through a lot. We probably can never recognize that other than doing things like this, as politicians trying to make a difference for the future. We can't make the past go away. I want you to know that in communities across Ontario, the hard lessons have been learned and they've made a tremendous difference in other people's lives. I just want to say thank you.

Mr. Davidson: Thank you very much. If I may, just very quickly, there are two things I'd like to say. Post-Walkerton, the lights are not on in all the neighbourhoods where they need to be on. We took a trip to well number 5 and the hydrogeologist told us that a community he was doing work for wanted to put in a well that so closely mirrored the conditions at well number 5 that he had to draw up a chart to show them what they were risking. So we need to do that education.

Finally, to that end, there's a book by Dr. Steve Hrudev from the University of Alberta, *Safe Drinking Water*, and in this book he uses 65 examples, I believe, of outbreaks in affluent societies similar to Walkerton, with variances, where the lessons hadn't been learned. So to those who come back and say, "This was a one-off, we need not worry": We repeat the same mistakes. That's why education is going to be absolutely paramount in making this bill effective. It's the people in the field, in the industry, in the municipalities and the cottages, in the mining industry, all those, who are going to make this work, not the bureaucrats, unfortunately, because if they could, they would.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you to Concerned Walkerton Citizens. We see all the work that you have done. I would hope that government has gotten to the bottom of what happened in Walkerton, where untreated or contaminated water got into people's homes.

As far as today's hearings, again, all present support the objectives and all present are committed to implementing the recommendations of Justice O'Connor. My question to you is, given the amount of time you spend on this, are all of Justice O'Connor's recommendations being implemented? I raise one question and it relates to these hearings: O'Connor, as I understand it, recommended that this source water protection could be accomplished through an amendment to the Environmental Protection Act; it didn't necessarily require a separate, stand-alone chunk of legislation.

Mr. Davidson: I think that when you look at what Justice O'Connor has done, he has given us a blueprint to safe water. But if you use that analogy of the blueprint, you have to take the blueprint, and when you get to the building site, all of a sudden you realize, "Wait a minute. This isn't going to quite work because the back door is opening up into the side of a cliff."

I think that how we implement it is up for debate, and we hear that debate. That debate is healthy, it is lively and it needs to continue because there are many stakeholders that would suggest we've gone a little too far this way or that way. So I'm not as concerned about how we get there as the fact that we do get there and, while we're doing that, we don't sacrifice anyone along the way economically or viably in terms of their communities or their sectors.

Mr. Barrett: But two governments did make that commitment to you to implement it.

Mr. Davidson: And we hope that they carry through. We'll be watching.

The Vice-Chair: Thank you very much for your presentation.

ONTARIO PORK

The Vice-Chair: The next presentation will be by Ontario Pork.

Welcome to the standing committee on social policy. You can start when you are ready, sir. You have 10 minutes.

Mr. Bill Wymenga: I would like to thank the committee for having these hearings and for listening to our concerns and what we have to suggest. My name is Bill Wymenga and I'm a director of Ontario Pork and chair of its environment committee. To my right is Chris Attema. He's our water quality specialist whom we share with some other livestock groups.

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Ontario pork producers understand the importance of clean water legislation and a necessity in exercising best practices in environmental stewardship. We are quite proud of the way pork producers have stepped up to the plate since the passage of the Nutrient Management Act, and we are certain we will continue to do so with workable clean water legislation containing proper economic incentives as recommended in the Walkerton inquiry.

We want to use our time today to raise three fundamental concerns that we have with the legislation.

First, it is our view that the current legislation is overly punitive and does not make a positive improvement over existing legislation to improve Ontario's drinking water quality or risks. All impacted business and landowner groups agree that it is vital to have a safe and reliable source of water in this province. At the same time, it is important to bear in mind that high standards for drinking water are already in place in Ontario. Further, there are laws in place to regulate and punish polluters. In this context, it is difficult to understand the

business case and administrative need for additional rules, regulations and enforcement protocols.

Ontario pork producers are currently held to a very high standard when it comes to polluting. An operator who allows any amount of manure to move off-site into any waters that may impair the quality of water is guilty of an offence. The only defence is due diligence.

Our concern is that the bill goes beyond what is reasonable and shifts the burden of proof to the landowner. In our view, provincial regulators currently are charged with the responsibility to scientifically demonstrate an adverse effect from an existing normal farm practice. Under Bill 43, the process is reversed and the agricultural landowner must satisfy the municipal permit official that the normal, legal farm practice does not cause harm.

Rather than creating a predictable and scientifically sound framework for managing legitimate risks, the proposed Clean Water Act establishes an ill-defined regulatory process that will likely result in overly risk-averse municipal permit officials inappropriately applying the precautionary principle to place an unfair and unnecessary burden on the landowner. Placing this level of technical responsibility and legal liability at the municipal permit official level is inappropriate.

In contrast, there is a need for targeted education, incentives and implementation procedures based on risk and linked to local source water protection objectives. It is disappointing that Bill 43 is entirely punitive and does not focus on the development of a practical and workable framework for making progress in water quality improvement.

Secondly, Bill 43 is vague on key definitions and scope which, because of farmers' large land bases, places a disproportionate burden on farmers, and this burden could well grow over time. Agricultural groups are confused by the inconsistency between the broad purpose statement found in the Clean Water Act—and it says that purpose is "to protect existing and future sources of drinking water"—and assurances that the focus of the proposed legislation is municipal residential drinking water sources. Further, our concern is that surface water intake zones, as defined in the yet-to-be-finalized regulations, will impact a much larger land area than the municipal wellhead protection zones.

The definitions of terms such as "significant drinking water threats" in the proposed Clean Water Act are unduly broad and subjective, and they lack any meaningful criteria as a screening mechanism, thereby casting the broadest possible net. Our interpretation is that virtually all activities in a source protection area will be designated, at first instance, as a drinking water threat. This definition fails to recognize existing approvals, guidelines and standards that govern normal agricultural land use. The resulting uncertainty, and its consequent investment of resources to deal with any and all such threats, is unreasonable. Agricultural producers within the designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards.

Finally, the proposed act is inconsistent with the Walkerton inquiry recommendations that there be a clear commitment for fair funding principles. The implementation cost and various benefits of Bill 43 are unknown, and a cost would appear to fall disproportionately on rural businesses and landowners. The bill appears to be so structured that all of the implementation cost is picked up by either the impacted municipalities or the impacted landowner. It is essentially a case of expropriation without compensation.

It is our position that Bill 43, as it stands, will have serious financial consequences for landowners, operating to effectively expropriate lands without any apparent compensation. Section 88(6) should be removed and replaced with a section with clearly defined protocols that source protection authorities and municipalities can use to negotiate fair solutions with impacted agricultural landowners. The concept of a provincially supported agricultural stewardship fund to assist impacted landowners and municipalities should be specified in the act.

Agricultural producers within designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards. Under these circumstances, competing jurisdictions and reasonable stakeholders favour establishing fair and reasonable cost-share and/or compensation.

Consider what the Walkerton inquiry recommends. Recommendation 16 of part two of the Walkerton inquiry states, "The provincial government, through the Ministry of Agriculture, Food and Rural Affairs in collaboration with the Ministry of the Environment, should establish a system of cost-share incentives for water protection projects on farms." This should be in any new legislation.

Also, the provincial advisory committee's recommendations 33, 34 and 35—I'll read each one.

Recommendation 33 states, "Consultation on implementation and ongoing planning, including how to pay for them, be undertaken with different stakeholder groups immediately following receipt of this source protection planning framework. This consultation should start from the list of potential roles and responsibilities presented by the advisory committee in its report."

Recommendation 34 states, "The model for the sharing of costs to align funding mechanisms with the appropriate responsible body should be negotiated with stakeholders while the initial source protection plans are being developed. Furthermore, all those in a planning area, particularly those who impact sources of drinking water and those who benefit from it, should contribute, to some degree, to the costs of source protection."

Finally, recommendation 35: "Incentive programs and payments for environmental benefits should be considered, especially in sensitive areas and well capture zones, as one way to encourage implementation of source protection measures and provide for long-term sustainability."

In addition, this legislation should be changed so that the Ministry of the Environment is prohibited from

approving any source water protection plans that do not include an assessment of costs and a defined budget for its implementation.

In summary, let me just state four things:

(1) The pork producers of Ontario support the objective of Bill 43 to protect source water areas; however, we feel the approach is wrong. This current approach will just create unnecessary conflict in the countryside.

(2) Bill 43 is overly punitive and places undue authority in the hands of local officials. There is a need for targeted education, incentives and protocols based on risk management principles and farming best practices with better linkages to local source water protection plan objectives.

(3) The scope and definitions contained within the bill are too broad. They lack objective criteria and they fail to recognize existing approvals, guidelines or standards that govern normal agricultural use.

(4) It is our position that Bill 43, as it stands, will have serious financial consequences for landowners. Section 88(6) should be removed and replaced with a section with more clearly defined protocols that source protection authorities and municipalities can use to negotiate fair solutions with impacted landowners. The concept of a provincially supported agricultural stewardship fund to assist impacted landowners and municipalities should be specified in the act.

I want to thank you for your kind attention and I would welcome any questions that you may have.

The Vice-Chair: Thank you for your presentation. Now we open the floor for questions. We start with Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today, and thank you also to Jamie Boles and to Chris Attema, who have worked very hard on behalf of the associations they're involved with.

You've mentioned a lot of topics and I appreciate the recommendations that you've brought forward. In your opinion, has the government established the reasons why Bill 43 is needed? Do you agree with Justice O'Connor that the government could achieve source water protection through existing acts and legislation and that implementation costs be funded by the province?

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Mr. Wymenga: Yes. I think you raise a very important point. I think that's exactly it. It could be done through existing legislation, and then we could follow the process of having incentives and education and other types of things. That type of system will work much better with farmers in the countryside. This type of approach, a municipal permit official coming in, telling a farmer he must do this, "And, by the way, you're going to pay so many dollars to do it," is just not going to fly in the countryside. If we want legislation that's going to work for Ontario, it needs the support of the countryside. There has been a suggested hardship fund, but that's an after-the-fact case. You want a farmer to prove that he's doing the right farming practice, and then you want him to prove he has a hardship. I don't think that's going to work.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you very much for coming in today. When you say that this won't fly in the countryside if it does not have an incentive and funding component, concretely, what do you mean? Do you mean people won't actually implement things, people will be very resistant, people will take legal action against municipalities? Can you outline for me what that means?

Mr. Wymenga: You've probably mentioned three of the possibilities that would occur. It would range anywhere from civil disobedience to taking legal action. Farmers don't always agree on everything. A lot of times we have a lot of divergent opinions. This is one issue where I think you will find complete support across farm organizations that this is the wrong approach and that there needs to be some kind of funding mechanism in place.

Mr. Tabuns: And funding is really the key issue? I mean, a lot of the other stuff we can negotiate, but the funding is the heart?

Mr. Wymenga: Funding is one of the key issues, and the approach that this legislation takes. The approach is a heavy-handed approach with permit officials. We want an approach that is more incentive-based, more education-based, so that farmers will rally around it. Farmers are very comfortable working with these types of programs. We've had CURB programs, land stewardship programs. We had the environmental farm plans. These are the types of programs that farmers rally around, and they actually raise the standards rather than going to a minimum standard that legislation or regulations tend to have.

The Vice-Chair: Mr. Wilkinson?

Mr. Wilkinson: Thanks for coming in. As the member for Perth—Middlesex—also the most productive pork riding in the country; I'll add that as well—it's good to see you. I think you'd be heartened by the comments the minister made at the beginning of the hearings yesterday about the need to move from the permit official model. We've gotten some great feedback from agriculture about going to the risk management approach. That would ensure that any kind of heavy hand is at the back end of this process if there really is somebody, a farmer or anybody else, who just does not want to deal with what science has proved to be a significant threat to the drinking water of the whole community. So that would allow environmental farm plans, nutrient management plans, those types of programs like we've heard about in Oxford and the region of Waterloo, all to be taken into account. It might be part of the need to document that to make sure we're keeping our aquifer safe.

I give the example—we were just out at one of your members, Bert Vorstenbosch Sr., whom you know—the work that he has done about making sure that he's using a natural area to capture manure if on the off chance there was a manure spill from his pork operation, which is beside the Whirl Creek. He has done a wonderful job of actually keeping that water clean. He has his nutrient

management plan, he does all of that, and his environmental farm plan. He has taken that extra step. So that's what you're saying about the CURB program and all of that: It's the ability to move kind of collaboratively.

Why we went with this bill is because if we use the OWRA or the EPA, those tools would not allow us to have this kind of consultation: everyone who is in the same watershed coming together on these committees, identifying the aquifer, getting the science done and working together for the common good of everybody who draws that water. So I think that's why we've got a separate Clean Water Act: because we think it's just a better way to build it, from the groundwater up.

The input we've gotten has been pretty consistent. I know the minister is monitoring this. It means a lot to us that Ontario Pork—I just want to say to your members, who have done some wonderful environmental stewardship work, that they've actually been able to help our urban colleagues see right on the ground the work that can happen, particularly in the pork industry.

Mr. Wymenga: I appreciate those comments. That's exactly the point I want to make. If you work with farmers in a collaborative way and give the proper incentives, farmers often go beyond what is required, as you mentioned. In a nutrient management plan, when we had some funding for manure storages, farmers went beyond and some built 400-day storage, because they just want to make sure they get it right. So getting farmers on your side is to everybody's benefit.

The Vice-Chair: Thank you, sir, for your presentation. Thank you, Mr. Wilkinson, for the questions.

ONTARIO GROUND WATER ASSOCIATION

The Vice-Chair: Now we move to the next presentation, by the Ontario Ground Water Association.

Welcome. You can start when you are ready. You have 10 minutes for speaking time and five minutes for questions.

Mr. Craig Stainton: The Ontario Ground Water Association represents water well drillers, pump installers, manufacturers and suppliers, scientists and engineers who operate in the groundwater industry. The association was formed in 1952 and is dedicated to protecting and promoting Ontario's most precious resource.

We appreciate the opportunity to present our concerns and suggestions to this important meeting. With us today are Kevin Constable, president of the Ontario Ground Water Association; Greg Bulloch, second vice-president; and Earl Morwood, our executive director. I am Craig Stainton, the first vice-president and will be making the presentation today. We have provided sufficient copies. I hope everyone has one.

Building capacity and the Clean Water Act in a rural setting: Affect, protect and fund everyone equally in this province when it comes to drinking water.

The common denominator in all discussions regarding the Clean Water Act must be water wells. There are

hundreds of thousands, if not millions, of water wells in Ontario. This does not include monitoring wells and diamond-drilled exploratory wells. All of these holes in the overburden and rock can, and do, present the greatest risk to Ontario's groundwater aquifers and even surface water.

What is the state of the current groundwater industry? Over the past six years, firstly with a Conservative approach and now with a Liberal approach, we at the Ontario Ground Water Association have attempted to bring the value of groundwater to public thought. It's not easy. Groundwater is taken for granted.

While the health of water wells, such as Walkerton, or from surface supplies, such as the First Nations reserve, makes big news, the consequent discussions which result are mainly focused on municipal water systems. Despite our hard work, not much attention is paid to domestic and farm water wells in Ontario.

Why is rural Ontario less important than urban centres and other areas that have municipal water systems? Bill 43 is a nice start, but without major expansion to cover all wells, this legislation does not deserve the title of Clean Water Act; try the "municipal water act."

Bill 43, the Clean Water Act, as it currently reads, does not go nearly far enough in protecting all Ontarians, the stated mission of the act. This bill and those who designed it continue to claim that this will provide clean drinking water for all Ontarians, when in fact it does nothing for those on domestic and farm wells. Minister Broten and MPP Pat Hoy, among others, are on record as saying that all of the people of Ontario deserve good-quality drinking water. Well, prove it. To date, the MOE, under Minister Broten and Premier McGuinty, has actually resisted all efforts to improve the rural infrastructure of water wells in Ontario. They know the issues and the problems but have done nothing to make the situation better. So why should we trust this government and this minister when they talk clean water? To drive this point home, on the weekend a man fell through an abandoned well inside his friend's garage in Ipperwash, Ontario—25 feet deep. He was not killed, but after all was said and done he simply covered it up again with another piece of wood. No one from the MOE or the municipality made him understand that he was breaking the law and putting our water and other people at risk. This same government wants us to believe that it will talk the talk and walk the walk for the long term on a comprehensive clean water program when it has ignored rural water issues ever since its victory in the last election.

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Poor past practices mean faulty records upon which to base current groundwater studies.

A lot of the information on wells for municipal well-head protection zones is going to be based on well reports, and many well reports are not accurate. Many do not actually exist.

Abandoned water wells and boreholes affect the confidence in domestic and municipal wellhead areas and

will thwart any attempt to clean up or maintain the quality of water in the proposed watersheds.

The OGWA estimates that there are over 1.5 million unsealed, abandoned water wells in Ontario. The OGWA believes that unsealed, abandoned wells provide a direct link between surface pollutants and groundwater. Ontario is the envy of the world when it comes to fresh water. Every litre of water contaminated is one less litre available for drinking. Those abandoned wells are the most important risk to the minister's new source protection strategy. The abandoned water wells represent a thousand pinpricks into a watershed. Abandoned water wells offer the potential to have a profound effect on the future health of the many watersheds throughout Ontario. The plugging and sealing of these wells will protect the aquifers and the watersheds.

A source protection strategy must target the plugging of abandoned wells to protect Ontario's abundant water resources. Ninety percent of the abandoned wells may not have accurate well records. We may have more abandoned wells than we have well records at the MOE. The well record may not be accurate because the ability of the well to produce water and the static level may have changed since the well record was produced. Special diagnostic tests must be done prior to decommissioning unrecorded wells, wells with no logs or construction records. This means that the technician doing the decommissioning must rely on a proven technique listed here to go about the business of decommissioning without relying on a record that may not exist or be accurate. Well decommissioning procedures should contribute to the future well-being of our drinking water supplies, not cause a future source of contamination or interfere with the natural groundwater flow. The OGWA promotes the management and protection of Ontario's groundwater resources for future generations.

Who goes out tramping the fields looking for abandoned wells? We still do not believe that the municipalities are vigilant enough on the proper abandonment of wells during development. It must be mandatory, upon the installation of new municipal water lines, that unused water wells be properly decommissioned as part of the water line costs. Currently, some municipalities encourage proper decommissioning as part of a water line hookup, but without adequate funding, this rarely if ever happens. These are the same municipalities that we are going to ask to spend hundreds of millions of dollars on source protection. It'll never happen. It will fall back on individual well owners, rural inhabitants and the farmers.

There must be prescriptive guidelines required to better protect wellhead areas. While not all examples can be covered, there must be some attempt at guiding the process.

The groundwater industry needs enforced minimum standards—enforced minimum standards—just as exist in other sectors. There needs to be a professional designation, as exists in provinces such as Alberta, so that we know that the contractors performing work on groundwater apparatus are allowed and able to do so. It appears

that the current act allows too much power to the MOE and conservation authorities.

There must be an opportunity for each SWPC to make decisions based on local needs. The act must remain true to the original premise that CAs are advisers only and that the SWPC makes the decisions and orders the appropriate work done. The CAs and the SWPC must receive funding from the same source. Currently, the CAs are getting their funding from the province. Their allegiance may be to the province at the expense of the SWPC and the local area. That would be a severe problem to any viable program that included trust as one of its priorities.

Adequate funding must be available from the provincial government for well upgrades, decommissioning and education of the people.

Conclusion: There is a great risk here in rural Ontario.

The Vice-Chair: Thank you very much for your presentation. I like your conclusion. We'll start with Mr. Tabuns.

Mr. Tabuns: Do you have—I'm really bad at this. Thanks for making the presentation. It's interesting; I haven't had this information come before us before. Do you have a sense of the kind of cost we're talking about to catalogue all the existing abandoned wells and the cost of decommissioning them safely to protect groundwater?

Mr. Earl Morwood: The decommissioning costs—we have two issues: We have the oil wells and the gas wells in the province and we have the water wells in the province. For water wells it's about \$3 billion to \$4 billion, and for oil wells, \$5 billion to \$6 billion. Of course, you wouldn't have enough infrastructure to do it all at once. It would have to be over several years. That's not cataloguing, that's just hiring a contractor, so probably about \$10 billion to \$12 billion for those two things.

Mr. Tabuns: So these abandoned oil and natural gas wells have been flooded with groundwater over the decades?

Mr. Morwood: They have the ability, with the brine or whatever is inside, to contaminate a groundwater source.

Mr. Tabuns: Has that actually happened in this province?

Mr. Morwood: Sure, all the time.

The Vice-Chair: Do you mind, sir, stating your name for Hansard?

Mr. Morwood: I'm sorry. I'm Earl Morwood. I'm the executive director.

The Vice-Chair: Thank you very much. The parliamentary assistant.

Mr. Wilkinson: Thanks so much to the Ontario Ground Water Association for coming in. It's good to see you again, Earl.

Mr. Morwood: Thanks, John.

Mr. Wilkinson: I just want to get to this part of your presentation, that I don't think you got to, about the need for us to be able to deal with this. There are, of course, the members of your association and then there are other people who aren't members of the association. I saw in

your brief the need for us, if we're going to tackle this problem, to be able to make sure that the professionals are at it. You probably have the best records. Some of the records I know, dealing with conservation authorities who've been trying to map the aquifer—they're going over old records of abandoned wells and how accurate they are. I take your point that they're not a great accurate source, therefore they've had to do additional test wells to actually verify that.

So you see the solution—one is making sure that all people belong to your association so we get that minimum standard and that duty of care that your members provide?

Mr. Morwood: One of the advantages of being a member is that we do a lot of training of our membership, and we keep them up to date and on track. That isn't happening with anybody who isn't licensed or isn't a member.

Mr. Wilkinson: I know, and you've brought a great concern to us. I know that 70% of people get their drinking water from the Great Lakes, that's what we've been told, but you're saying that 97% of the current freshwater supply is in Ontario. That's because of the vastness of the aquifer, actually, compared to the Great Lakes, right?

Mr. Morwood: First of all, I think the Ontario geological survey says that 96% of all water is groundwater; secondly, the surface water is replenished by groundwater. So most water would be affected by groundwater, yes.

Mr. Wilkinson: Okay. Thanks.

The Vice-Chair: Mr. Barrett.

Mr. Barrett: Thank you to your association. I just want to clarify some of the figures. Do we have an exact figure of how many millions of water wells there are? I think previously we heard three million water wells, then you mentioned exploratory wells, and then of course the 1.5 million abandoned wells. I'm not sure now many oil wells there are. There are quite a few natural gas wells in the Niagara-Haldimand area. In fact, there are more holes in the ground down there than there are in Saudi Arabia.

We have a problem, certainly with natural gas wells. With the abandoned ones, they are instructed to decommission and seal them. I'm not sure how much money people are getting from government to help them close up the natural gas wells, let alone the oil wells. We know that there's some for the water wells. Can you just give us the figures? I'm concerned; I hear \$3 billion to \$4 billion and \$5 billion to \$6 billion. Another figure we've heard bandied about earlier was \$7 billion. Can you just summarize that again, quickly?

Mr. Morwood: Currently, there is no provincial money for water wells. There are some hit-and-miss conservation authorities. There is a \$5-million program from the MNR to do oil wells.

Mr. Barrett: Is there something for natural gas wells?

Mr. Morwood: Not that I know of. Oil wells cost about \$60,000 a well, I think, so \$5 million to do those—and water wells. First of all, holes drilled for mineral

exploration aren't considered wells even though lots of people use them as such. That's why we're not sure about numbers, because we don't count those at all.

Mr. Barrett: What were the gross—

The Vice-Chair: Thank you, Mr. Barrett, for your questions. We don't have much time. Thank you for your presentation, sir.

Mr. Morwood: Thank you for having us.

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CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Vice-Chair: The next presentation will be by the Canadian Federation of Independent Business. If they are around, they can come forward to the stage.

Good afternoon. Welcome. You can start when you are ready, sir. You have 10 minutes for speaking and five minutes for questions.

Mr. Satinder Chera: Thank you, Mr. Chair. My name is Satinder Chera and I'm the director of provincial affairs with the Canadian Federation of Independent Business. I'm joined today by Ontario's policy analyst, Plamen Petkov.

We'd like to thank the committee on behalf of our 42,000 small and medium-sized business members in the province of Ontario, of which 120 reside right here in Walkerton. At the outset, let me say this: Our members strongly support the objectives of Bill 43. That being said, they are seriously concerned with how these objectives are proposed to be implemented. What we're going to do today is take you through some of those specific concerns that our members have and also show you a survey that we conducted with our membership earlier this year on Bill 43.

Before I get to that, let me very quickly take you through a bit of background on the small business sector. CFIB conducts nearly 2,000 personal visits a week with our membership in Ontario. We call upon our members in their places of business at least once a year, and there have been a number of different concerns raised through those individual contacts. In the audience today we're joined by two of our field representatives who also cover the Walkerton region. It's very clear that our members set association policy. We never take a position on an issue unless we've canvassed our members. So on Bill 43, the data you're going to receive today are directly from them.

The next slide is basically CFIB's Ontario member profile. This is just to give a bit of an idea of the types of businesses CFIB represents. Agriculture and related sectors in particular are going to bear a heavy burden of this legislation and it's their concerns that we're also going to highlight for you today.

The next slide is "Small Biz is a Good Barometer of the Economy." We do this on a quarterly basis. We survey our members on their business expectations. We've been doing this for a number of years now and what we have found is that as a leading indicator, it is a

good barometer of how the economy actually performs. Unfortunately, in Ontario recently there has been a levelling off of business confidence expectations.

The next two slides detail some of the specific sectors we represent and each of their expectations. If you go to the second part of that breakout, you'll see that the agricultural sector, which we'll get to in a moment, has been particularly hard hit over the past few years by a number of different factors, but in particular this legislation will add to the uncertainty that that sector is facing. I think the committee needs to fully appreciate those concerns. You've already heard some of them today from other presenters.

When it comes to the environment, small businesses are actively aware of their environmental responsibilities. In fact, they have repeatedly stated that protecting the quality of drinking water is a top priority for them, which is why the concerns that we have with Bill 43 are that much more critical.

On the next slide we talk about the main motivational factors for environmental changes. Personal views and concerns are the primary motivator for environmental action. Our members have consistently said that, by contrast, government regulations are seen as less influential.

Now what I'm going to do is turn it over to my colleague, Plamen, to take you through some of the specific concerns we have with Bill 43 and our members' responses.

Mr. Plamen Petkov: Thanks, Satinder.

Based on what we've heard from all members, we were able to identify a list of major shortcomings that we believe need to be addressed before this legislation is implemented. I'll start with the identification and assessment of water threats first.

Bill 43 does not specify the criteria that will be used to identify land uses and farming and commercial activities that could be considered water threats. The legislation stipulates that only significant threats will be subject to source protection plans, but with no definition of "risk," it is really arbitrary to determine what constitutes a significant water risk. This adds to the ongoing uncertainty around this legislation, which really affects our members. Also, Bill 43 does not provide opportunities to dispute the science in an assessment report, and we believe that disputes over source protection plans will be affected by this omission.

Next is the composition of source protection committees. In its current format, Bill 43 does not ensure diverse representation of stakeholders on these committees. The legislation needs to set out clear guidelines to ensure membership representation not only from municipalities but also from industry, agriculture and other non-governmental organizations. In fact, the current proposal could actually result in pitting one segment of the population against another.

The actual enforcement of Bill 43 is also problematic. The act gives wide investigatory powers to municipal officials who at times may lack appropriate technical expertise. The power of entry is something which is

specifically troubling for the small business community. Municipal officials entering private property to gather information at any time without the owner's consent is something that is unacceptable to our members. Therefore, we believe that conflict will definitely erupt between municipal officials or permit officers and owners. Instead of promoting co-operation, the act will de facto create confrontation between stakeholders.

Funding, we believe, is another issue that needs to be addressed. There is an apparent lack of government commitment to fund a sustainable long-term source protection program. While the government has already allocated \$67.5 million for technical studies and for training of staff, nothing has been committed to actual implementation and stewardship. In addition, no official cost estimates have been presented. We believe that the government has to undertake full cost-benefit analysis and has to make a firm commitment to funding before implementing Bill 43.

Finally, the cost of compliance will have a heavy impact on small businesses and farmers. In certain cases, it will provide a significant yet undue financial burden to small businesses, farmers and landowners whose lands and farming or business activities fall in the areas of source protection plans. As there is no commitment from the government to provide financial assistance to those who need to relocate, modify and reduce operations, the full cost has to be borne by the owners. This is specifically critical in the agricultural sector. As we mentioned earlier in our presentation, this is a sector that is already suffering. Not surprisingly, then, in the agribusiness survey that we conducted a few months ago, an overwhelming majority of our members, 85% of them, believe that the government has to provide financial compensation.

Also, last year, we conducted a groundbreaking study on farm income and found out that agribusiness members repeatedly have stated that government regulations continue to be one of the major constraints to enhancing their net income. This is why you can see that government regulations are catching up with other deteriorating business factors such as high input costs and low commodity prices.

Our research also showed that a great number of our agricultural members, actually more than 60%, are dissatisfied with the way the government has communicated Bill 43. What is even more disturbing is that almost 20% have never even heard of the Clean Water Act. Now, again, this comes from a segment of the economy, a segment of the population, whose top environmental concern is clean water. Such high levels of dissatisfaction call into question the actual consultation process conducted by the Ministry of the Environment prior to introducing Bill 43 and also put at odds the actual success of the objectives of Bill 43.

It is not surprising, again, that four of every five agribusinesses that we have surveyed have little or no confidence in the Ministry of the Environment to regulate source water protection. Actually, if you look at this

chart, the Ministry of the Environment barely beats "Don't know" and "Other." Again, this is a clear indication that there is a growing frustration in the agricultural sector.

Mr. Chera: I know we've run out of time.

The Vice-Chair: So thank you for your presentation. Do you have time to answer questions?

Mr. Chera: Absolutely.

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The Vice-Chair: Okay. Mr. Wilkinson?

Mr. Wilkinson: Thanks for the CFIB coming in to help us out on this. I'll just give you a bit of an update on where we are from some of the testimony from the minister at the beginning of the hearings. I know that she is looking at being quite a bit more prescriptive about the source protection committee. Your concern on making sure that we've got all stakeholders—and that includes business; in ridings like mine, farming being the largest business, that they're at the table. So we heard those concerns, and we appreciate that.

For some, there is the debate between how and whether one defines "risk" in the framework of the act or whether you could actually do it through regulation and have some more control over that. I know we're still debating that.

I know that we've gone from less to the comment of permit officials and more to one of risk management. I think that has been pretty well received and that your stakeholders will be very happy with that; it will reduce some of that anxiety that they have.

Today we had compelling testimony about, "We always have to look at the costs of doing nothing." So I would commend Hansard to you on that issue. I think we've agreed, all three parties, that this is something we need to do. We're just working on the implementation.

I will share the other questions with the minister on this, about your concerns. There was an interesting statistic about OMAFRA, I must admit. I'll have to share that with the Minister of Agriculture, Food and Rural Affairs. But thanks for getting that to us.

Again, this is framework legislation. Ultimately, we're going to get to implementation, but we have to get the science done first, and we have to do that in consultation.

We've had a lot of consultation with farm leadership, but in a business as diverse as farming, with so many individuals, you tend to have to deal with the leadership, and there are many, many leaders in agriculture. So we have been consulting. Perhaps the farmers, your members, just haven't seen that. That's just to give you a summary of some feedback on your feedback.

The Vice-Chair: Thank you very much, Mr. Wilkinson.

Mr. Chera: Can I make two quick comments?

The Vice-Chair: You can do it through that person, if you want.

Mr. Chera: Sure.

The Vice-Chair: Ms. Scott.

Ms. Scott: Could he make his comments and then I get to have my question after? Is that fair, Chair?

The Vice-Chair: Well—

Ms. Scott: Go ahead.

Mr. Chera: Just on Mr. Wilkinson: Thank you for the update. We certainly look forward to seeing the written amendments that the minister will be proposing.

Two quick points. One, with respect to doing nothing, I don't think that that's what our members are saying; quite the opposite. Our members have been at the forefront, advocating the need for clean drinking water. They've been very consistent about that. I think the concern comes from the fact that there's so much uncertainty as to the way this legislation is going to be implemented and what the cost impact is going to be. I think you can appreciate that, particularly from the farming sector, which has shouldered a huge burden over the past few years from a number of different factors, then having that much more uncertainty added on their shoulders.

With respect to consultations, it's unfortunate. We have tried to seek a meeting with the Minister of the Environment for the past eight months. We've sent in two letters. Unfortunately, the response to our recent letter was that she had other priorities and that she wasn't able to meet with us. So if you're able to get us a meeting with the Minister of the Environment, we'd certainly appreciate it.

The Vice-Chair: A quick question.

Ms. Scott: A quick question is: Is this current legislation, Bill 43, going to drive more businesses out of Ontario, the way it stands, because of the price tag that's going to come with it and the uncertainty that you mentioned?

Mr. Chera: Absolutely. I think that uncertainty is definitely a killer for businesses. Again, they don't object to their responsibility. They don't object to the objectives of the bill. I think what they're simply asking for is, (1) "Talk to us," and (2) "Make the process one that's fair and one that we're able to participate in." If you simply pass down regulations and we don't know what the impact's going to be on our business and we don't know what the costs of that are going to be, it's going to have a serious impact on whether or not they're able to stay in business. Certainly, as we've demonstrated to you in this presentation, our farming members in particular have had a tough time and are finally beginning to get on their feet again.

Ms. Scott: Thank you very much for appearing here today. I appreciate it.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks very much for the presentation. Given the impact on Walkerton of the water catastrophe, the contamination catastrophe, do you, as an organization, feel a sense of urgency in getting an act in place that's going to be effective?

Mr. Chera: Plamen, do you want to—

Mr. Petkov: Sure. Our members definitely appreciate the fact that something is being done in terms of getting legislation on clean water. The question is, do we need separate legislation for that or it is okay to make amendments to current regulations that we have on clean water?

This is consistent with Justice O'Connor's recommendations after the Walkerton tragedy. The feedback we're getting from our members is in that direction.

The Vice-Chair: Thank you very much for your presentation. I'm sorry, we have limited time. We have to go through all the presentations.

GRAND RIVER CONSERVATION AUTHORITY

The Vice-Chair: The next presenter is the Grand River Conservation Authority. Welcome to the standing committee on social policy. You have 10 minutes of speaking time and five minutes for questions. You can start any time you want.

Mr. Peter Krause: Good afternoon, Mr. Chair and members of the standing committee. Thank you for allowing us to present our comments today. My name is Peter Krause and I am chairman of the Grand River Conservation Authority. To my right is Paul Emerson, who is the chief administrative officer, and to my left is Lorrie Minshall, the project manager for the proposed Lake Erie source protection region.

The Lake Erie region includes the watershed areas of the Kettle Creek, Catfish Creek, Long Point region and Grand River conservation authorities and extends immediately west of the greater Toronto area from Halton Hills to St. Thomas. Our four conservation authorities have been working together very successfully on source protection for about three years now, and my comments here today are also made on behalf of those conservation authorities.

We strongly support source protection as a first step in the multi-barrier approach to clean and plentiful supplies of drinking water in Ontario, which are essential to Ontario's economic and social prosperity. We support the proposed conservation authority role in coordinating the development of collaborative source protection plans among the communities in a watershed. We also support the concept of a multi-stakeholder steering committee, named a "source protection committee," to direct the development of a plan. This is entirely consistent with the development of balanced, practical plans with broad local support.

However, there are some who argue that the source protection committee should be its own entity, independent of the conservation authority. Justice O'Connor considered and rejected this view. After reviewing the many options in his part two report, he concluded that conservation authorities "are the organizations best positioned to bring about effective source protection planning." They are a partnership of municipalities already operating on a watershed basis and they are experienced in the kind of locally based, collaborative planning that Justice O'Connor envisioned for this process.

The Grand River Conservation Authority has been active in protecting the quality and quantity of drinking water for 75 years.

We have, over the last 10 years, undertaken studies with our member municipalities and other partners that

provide examples of the types of technical work that need to be done to develop source protection plans. We have excellent working relationships with our member municipalities and also with the agricultural organizations and farmers in our watershed. We made submissions to the Walkerton Inquiry and we have been very active in each of the advisory committees on source protection to the Minister of the Environment. We have demonstrated experience in the kind of collaborative, watershed-based planning that Justice O'Connor envisioned for this process. We know that this can work.

In his part two report, Justice O'Connor pointed to the Grand River model in describing a source protection planning framework.

Based on the Grand River Conservation Authority's experiences and successes, we believe that there are some elements that are critical to the success of a drinking water source protection program for Ontario—the Grand River model, as it were. The following comments are made in the context of these success factors.

First, we understand that the proposed Clean Water Act is enabling legislation that fills gaps. But with no overarching statement of intent, the proposed legislation leaves the entirely wrong impression that source protection must focus on a regulatory approach. We submit that it is this impression that is causing most of the discontent with the proposed wording. We recommend that a principles section be added to section 1 of the proposed Clean Water Act to clarify some of the key aspects of the source protection process.

Ontario has a unique opportunity to develop a source protection program that is watershed-based and can be integrated with other water management programs and interests. We can avoid the administrative barriers, duplication and gaps that other jurisdictions around the world are working so hard to overcome.

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Justice O'Connor said that the various components of water management cannot be separated. His recommendations were based on the assumption that the Ministry of the Environment would develop a comprehensive water management strategy to address all aspects of water management on a watershed basis. In the absence of an integrated water management framework for Ontario, it is essential that the act clarify source protection as a component of broader water management.

The source protection planning process should consider the broader uses of water, including ecological, commercial, recreational and heritage values. The actual planning for broader watershed goals may be voluntary or occur outside this process. However, with neither an integrated water policy framework nor overarching encouragement for integrated planning, source protection plans will be the only aspect of watershed planning with status in provincial legislation.

This can have a number of negative consequences. A narrow focus on source protection may miss the opportunities for broader benefits, create conflict and possibly undermine the needs for other uses. In our written sub-

mission, we have recommended additional wording to make the link to integrated water management.

Secondly, our years of successful experience in collaborative planning have taught us that action happens when the implementers are involved in making the plan and agree on the approach. This approach promotes buy-in and builds partnerships to get things done. Collaboration also requires trust and a sharing of responsibility. We know that you can't legislate collaboration, but you can encourage it, indicate an intent and make sure that it can be part of this process.

To make a collaborative plan successful, there must be a range of tools and solutions available. Regulations should be seen as a last resort and used only when compliance is critical and other options have been unsuccessful. In particular, the permitting tool described in part IV should be "available to be used" and not mandatory. To borrow from a former Prime Minister, "Permitting if necessary, but not necessarily permitting." Our municipalities have identified that there is a gap in their current ability to protect source water, and this tool fills that gap.

Our interpretation of the proposed act, as it is written now, suggests that the use of the permitting tool is optional. Please guard against entrenching the permitting tool as the primary tool for protecting drinking water. One of the most powerful tools is voluntary action, so we ask that you provide for a stewardship fund to support incentives for voluntary actions and programs.

One important aspect of the Clean Water Act is that it should establish a policy for the level of drinking water source protection. The proposed act does begin to set this policy. It says that the plan will establish policies to ensure that every existing activity identified as a significant threat will cease to be a significant threat and that no future activities will become significant threats, but it falls short of setting out a clear and comprehensive policy because the act does not define the term "significant threat." Does it mean "not negligible" or does it mean "likely"? If the definition is left to regulation, it could be very broad and encompass so many threats that implementation will not be achievable, economically or practically. It could gridlock us.

The benefit of the risk-based approach that was recommended by Justice O'Connor and all three advisory committees is that we can set priorities and focus our efforts and resources on the greatest threats. This aspect is missing from the act. In fact, this ability to set priorities and focus is likely a key to resolving the issue of implementation costs. If we can set priorities and step through the issues, not try to do everything at once, source protection can be affordable.

A good example is the rural water quality program, a cost-sharing program involving municipalities and farmers that is delivered by the Grand River Conservation Authority. If you look at the total investment of the program over 10 or 20 years, the numbers are very large. If you were to cost the same program on a provincial scale, the numbers would look huge. But if you

look at the cost of our program on an annual basis, you can see that the investment is being made without straining our resources and that the program is highly supported by all participants. Also note that costs incurred voluntarily are much easier to swallow than costs imposed by regulation. So a focus on collaboration and voluntary action is also a solution to the issue of implementation cost.

Currently, the proposed act requires a plan to address significant threats in areas susceptible to groundwater contamination, whether or not they are currently municipal supply sources. We support this inclusion. Others have asked for restriction of the act to sources of municipal supplies only. We are concerned about what would happen if there is a large difference in the level of protection between municipal sources and other vulnerable sources of good drinking water. If there is a large difference in the level of protection, this could deter municipalities from tapping into those potential sources in the future because of additional restrictions that would follow the development of a new municipal source. The outcome may well be that, rather than deal with the problem, municipalities would simply turn to the Great Lakes for more water. Should we turn our backs on using our most valuable groundwater sources in the future because we don't want to protect them today? We think not. Please guard against this in your considerations.

I know I'm running out of time, so I'll just close my remarks by thanking you again for allow us to make the presentation and present these comments on the Clean Water Act. We will provide a written submission as well. Thank you.

The Vice-Chair: Thank you very much for your presentation. We have some time for questions. We can open the floor for questions. We'll start with Mr. Barrett.

Mr. Barrett: Thank you, Grand River CA. This range of tools, number 37—I'll just quote: "Regulations should be seen as the last resort and used only when compliance is critical and other options have been unsuccessful." Would that require an amendment beyond what you had suggested as putting in a principles statement?

Secondly, you're suggesting in number 40 that "use of the permitting tool is optional," so "guard against entrenching the permitting tool as the primary tool for protecting drinking water." Again, does that require an amendment or do you envision that as coming out in regulation? We know this is enabling legislation. The minister yesterday called it "preventive, foundational" legislation. I think that's the same meaning as enabling legislation.

Mr. Krause: Yes. It doesn't require amendments but it just—

Mr. Barrett: It does not require amendments? What would it require, then?

The Vice-Chair: Thank you.

Mr. Barrett: I'd like more than a two-word answer.

The Vice-Chair: Okay.

Ms. Lorrie Minshall: It doesn't require amendments but it requires that we guard against it as we put the

regulations in place etc. Or, based on other people's comments, we would not like to see it entrenched by amendment.

The Vice-Chair: That's more than two words. Thank you, Mr. Barrett. Mr. Tabuns?

Mr. Tabuns: Yes, thanks for coming down today and making this presentation. You talk about the stewardship fund. A number of your colleagues in other conservation authorities have come and said they need more than a stewardship fund; they need financial support to actually implement the monitoring, reporting etc. You haven't mentioned that. Can you speak to that issue for us?

Mr. Krause: In terms of the funding, if I can just talk about that for a moment; it came up, I understand, yesterday. The numbers that have been suggested are, in order of magnitude, correct. The funding also—I think the numbers that have been presented are a small percentage—represents well under 5% of the municipal costs of delivering water. Keep in mind that it's not all new money. A lot of the programs are now in place and monies have been allocated to them over the last two or three years. In terms of who pays, I believe that the user should pay, plus all three levels of government.

Mr. Tabuns: Okay, thank you.

The Vice-Chair: Parliamentary assistant?

Mr. Wilkinson: Thank you, Peter. Thank you so much for coming in. Of course, you're one of five conservation authorities in my riding at the top of Ontario, where all water flows downhill. The leading-edge work that the Grand River Conservation Authority has been doing is well regarded by the government. Thanks for the work that you're doing.

I just wondered if you could help us with a question that seems to be popping up. It's interesting, the O'Connor report; it depends on how you read it. I just want to get some clarity from you. There are those who have said, "Oh, no, no, you don't have to have a separate piece of enabling legislation for source water; just amend the EPA."

I read, in part two, his recommendations in regard to source protection, that there be leadership from the Ministry of the Environment, which should introduce the legislation. It should be based on the watershed. People who share the common source of water are the ones who can work together collaboratively to protect their water. It should be a local planning process; it shouldn't be top-down MOE at 135 St. Clair West but actually get the people on the ground, which I know is what Grand River has been doing. There should be overall approval by the Ministry of the Environment to make sure there's co-ordination and consistency.

I don't see how we could do that by—I mean, we've made this decision that we were far better to have a Clean Water Act, have a separate piece of legislation, than opening up the OWRA, opening up the EPA. So are we on the right path by having a Clean Water Act?

Mr. Krause: I believe we are. I think that should take precedence in terms of the other acts or pieces of legislation. I think the Clean Water Act is critical to over-

all water supply and to assurance that the water supply is of acceptable quality and safe drinking water for all, absolutely.

Mr. Wilkinson: And would you agree that in this act we have the statement that if it's in conflict with another act, it should always be the act that does the best job of protecting drinking water that should have primacy?

Mr. Krause: Absolutely; I agree with that.

The Vice-Chair: Thank you very much for your presentation. I'm sorry about the timing. We have to listen to all the people. We also have to go on with the job.

Mr. Krause: I appreciate the situation. Thank you.

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MUNICIPALITY OF BROCKTON

The Vice-Chair: The next presentation will be from the municipality of Brockton.

Thank you for presenting to the committee on social policy and thank you also for hosting us in this municipality. You can start whenever you want.

Mr. Dan Gieruszak: On behalf of the mayor and the council of the municipality of Brockton, I welcome you to Walkerton. I would also like to extend our appreciation to everyone who has participated today.

I'll leave to others to stress the real human impact when multiple layers of government get it wrong. I'll use this brief time to stress the unique opportunity you have to ensure Ontario's ongoing global competitive advantage, and that global competitive advantage is reasonable-cost access to clean, healthy water.

Those recommending that you weaken the act will suggest that implementing it will cost too much. Those recommending you strengthen it will be labelled as tree huggers. My expectation is that you understand that it is not the flora and the fauna and the fish that you have the mandate to protect; it is the quality of life of all Ontarians and the competitiveness of the province in a global economy.

One of the enduring lessons from Walkerton must be, "It is less expensive to protect our ground and surface water than it is to fix once contaminated."

Water is a limited global resource.

"An Unquenchable Thirst" was the headline in a December 2005 issue of the Owen Sound Sun Times. "The flow of the Colorado River has been reduced by half," not in the last 100 years, not in the last 50 years, but "in the last five years."

"As the supply and demand for usable water becomes increasingly precarious, many experts are predicting that water will become the oil of the future." This is not a quote from an environmentalist; this is a quote from Investment Executive News, August 2006.

Economic prosperity depends on the availability of fresh water.

"Industrial-led economic expansion in India and China will be limited by availability of fresh water for human consumption," says a January 2006 report from the Hong Kong-based brokerage firm CLSA Asia-Pacific.

Global corporate leaders such as General Electric, Siemens and 3M have already started buying up companies with water-related technology and service expertise. They anticipate the economic opportunity presented by the ongoing depletion of a limited natural resource.

In this region of Ontario, clean water is particularly important to human health, agriculture and tourism. What we share with the rest of Ontario is that the economic prosperity of our communities is dependent on reasonable-cost access to clean ground and surface water.

Ontario's ground and surface water provides Ontarians a unique competitive advantage. This unique competitive advantage will increase in value if maintained, managed and invested in wisely. It will provide Ontario sustained economic prosperity while developed economies around the world stagnate under the burden of clean water costs.

The current replacement value of Ontario's clean ground and surface water is trillions of dollars. These are real costs that will be faced by other developed and developing countries. This is an expense Ontarians can avoid through wise investment in our relatively healthy ground and surface water.

Ontario's health care provides companies a competitive advantage over their international counterparts. The competitive advantage that Ontario's clean water provides is not clearly understood and needs to be widely communicated.

So do we want to follow the lead of developed and non-developed countries to see who can be best at decontaminating water, or do we want to lead the world in economic growth through the wise investment in an asset no one else has? "How much are you willing to invest to protect an asset that is more valuable than Alberta's oil?"

An investment in the assessment of the true value of the ground and surface water from a local, provincial, national and global perspective is required to ensure science-based policies for source water protection are supported by far-sighted, global economic reality. This will provide further assurance that investing in Justice O'Connor's multi-barrier approach is a sound economic approach and not based on just the precautionary principle.

I've spoken to Dr. Sanjay Sharma, chair of the CMA Centre for Responsible Organizations at Wilfrid Laurier University. He's in the business and economics faculty there. Far too many of our studies are based on environmental assessments, as opposed to clear business and economic directions.

Municipal politicians want the accountability, responsibility and accompanying financial resource to ensure that their constituents can drink water anywhere in Ontario and be confident in the quality of water they drink. Justice O'Connor supports this through his many recommendations, and no one sector should shoulder an unfair share of the burden for protecting source water.

My final question: Are you willing to provide the leadership to make the tough decisions to ensure that municipalities throughout the province are partners in providing long-term leadership for the economic pros-

perity of the province, or are you going to use local politicians as shields between you, taxpayers and special interest groups?

The council of the municipality of Brockton unanimously supports the direction of Bill 43. We have suggestions for strengthening it. Many of our recommendations will be covered by others, so I won't go into them today. However, I do have copies of our resolution and recommendations.

My expectation is that among your recommendations to the province will be that the province must not only strengthen the existing act but also invest in communication regarding the economic value of clean, healthy water and the importance of source water protection as an investment in Ontario's prosperity.

Source water protection is not just a health issue. It's an issue of global importance. It is an issue where the people of Ontario have the opportunity to see municipal and provincial governments working together to craft our mutual economic prosperity. Thank you.

The Vice-Chair: Thank you very much for your presentation. We have some time now for questions. We're going to start with Mr. Tabuns.

Mr. Tabuns: Thank you very much for this presentation. Do you believe the act, as currently written, would have prevented the tragedy that happened here in Walkerton?

Mr. Gieruszak: Absolutely. There are a number of things that should have happened that didn't happen. Justice O'Connor pointed out that there were multiple levels of government that didn't appear to be living up to what they were mandated to do, for one reason or another. The recommendations put forward based on multi-layer barriers certainly put in place that when E. coli results show up in your well testing and those results go to the health unit, go to the MOE, go to different parts of the government, something is done about it and they don't sit on somebody's shelf, and that somebody doesn't rely on somebody else to make a phone call to ensure that action is taking place.

I think it's very clear that there are many people throughout the province who assume that part-time water systems managers were the problem. I think it's very clear, if you were listening to the news last night, that if 52 swimming pools in the city of Montreal are shut down, chlorine isn't the only solution and throwing more chlorine to this situation isn't the solution. Sorry; that's a very lengthy answer.

Mr. Tabuns: I don't mind.

The Vice-Chair: Mr. Wilkinson now.

Mr. Wilkinson: Thank you, Dan. One thing that we appreciate about the committee process is we can really get some wonderful and different viewpoints. You brought a whole other paradigm to this discussion when you were talking about this vast resource we have that we really don't even have quantified.

So the requirement under the act, under the assessment report, that there be a water budget; that, based on science, for every source planning authority in regard to

groundwater we'd know how much is coming in and how much is going out, and where it's coming from and where it's going to, and who's taking out—we'd actually be able to quantify this trillion-dollar asset that you've referred to, and then we could actually use that as the lever for Ontario's economy, as something that, going into the future, a lot of people around the world are saying is going to be a critical need in a lot of countries we're competing with.

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Mr. Gieruszak: Absolutely.

Mr. Wilkinson: So we'll definitely pass this back to our economic development people. The Premier is the Minister of Research and Innovation. I think they'll find this fascinating. It's great to know that the money we're spending right now is actually going to be able to help us assess the value there and this tremendous advantage we have as a province. Thanks for bringing that to our attention.

Mr. Gieruszak: I appreciate the opportunity to do that. I'll certainly look forward to the ongoing recommendations that this committee will make.

The Vice-Chair: There is still one question from Mr. Murdoch, if he wants to ask a question.

Mr. Murdoch: I noticed that maybe one of the things we've had problems with today is that who's going to pay for this really didn't come out loud and clear. I would have to say that all the presenters today actually think this is a good idea, to a point. They have their own ideas, why they'd like to tweak it a little differently, but I think everybody today so far has agreed we need a bill or something like this in some form. But the biggest question, again, and that's what we as opposition members will have to decide on, is that there's nothing to say who's going to pay for all of this. We're concerned in rural Ontario, and I'm sure you will be, that we get stuck, because we have the sources; the cities don't. If you put all the costs on to rural Ontario, we won't be able to afford it. I just wondered what your thoughts were on that.

Mr. Gieruszak: You're absolutely right. When we take a look at some of the environmental engineers when they talk about our watersheds and water systems—we see all these beautiful graphs in terms of water falling and where it flows. We know where it flows: It does flow to the major cities. Our municipality is an inland municipality. Whatever we do to protect our watershed here benefits everybody down the way. When our farmers and our citizens here within municipalities protect the watershed, everybody benefits, so we need an equitable reallocation of funds to ensure that. Part of what I've tried to focus on today is that if we understand that we have a trillion-dollar asset, perhaps it becomes a little easier to make an investment in protecting that asset.

Mr. Murdoch: If it's a trillion-dollar asset, then \$7 billion wouldn't be that much.

Mr. Gieruszak: These are big numbers.

Mr. Murdoch: You're right.

Mr. Gieruszak: But when we look at the growth of India, China, water depletion in the US, these are the

types of investments about which politicians with foresight, courage and a long-term vision need to say, "Big numbers? Big output."

Mr. Murdoch: Thank you.

The Vice-Chair: Thank you very much for your presentation.

THE ONTARIO RURAL COUNCIL

The Vice-Chair: The next presentation will be by The Ontario Rural Council.

You may start whenever you want.

Mr. Harold Flaming: Mr. Chairman, members of the committee, thank you very much for the opportunity. My name is Harold Flaming. I'm the recently appointed executive director of The Ontario Rural Council. Tom Prout, the chair of the environmental working group of our council, unfortunately was not able to attend and accompany me with this presentation, so I will take the liberty to present our thoughts.

First of all, this particular issue certainly is of critical importance to the council as a whole in terms of our overriding concern and issue in regard to building stronger rural communities. Having safe and secure water supplies clearly is a key issue, and certainly the council and its members would be supporting the overall objectives of the act itself. Prior to going into few comments that we have heard from our membership, I'd like to give a bit of an overview in terms of The Ontario Rural Council. It may help to put our comments into context.

First of all, we are a member-driven organization facilitating the engagement of rural stakeholders in dialogue and action on a wide range of rural issues. It's not just the environment but in the environment—the social, the health, the youth, the economic. TORC is the only multi-sectoral provincial organization representing the rural voice in Ontario. The membership itself is broken up into essentially five sectors: resource and environment, economic and infrastructure, community and human services, the government sector, and then individual members.

TORC's mission is to act as a catalyst for dialogue, collaboration and action on issues related to building strong rural Ontario communities. We act as a convenor, a facilitator, bringing all sectors together related to a particular issue in providing a forum for discussion and bringing to the table the various perspectives. Certainly we do act as a networker of rural stakeholders, a forum where all rural voices may be heard on that particular issue, and then begin to pull together a collective voice related to what rural Ontario is saying. Lastly, we're able to identify and communicate the ground intelligence on a particular rural issue, the challenges and opportunities, thereby being able to communicate to decision-makers related to that particular issue at the federal, provincial or municipal level.

Some of TORC's activities revolve around providing a valuable venue for all rural voices. So through conferences, issue forums and summits we are able to gather the input, the perspectives, from a wide range of issues

and rural stakeholders. Some of our past forums have dealt with urban-rural summits, urban-rural issues, alternative energy, First Nations issues, rural health, rural youth and certainly the environment.

In June 2006 we did hold an environmental forum on Bill 43, the Clean Water Act, in Peterborough. At that particular forum we had 60 participants who heard presentations, experts, dealing with this issue and had an opportunity to raise their concerns, some potential suggestions concerning changes and solutions. We are in the process of preparing a green paper as a result of the forum which will be made available to the committee shortly. This document is in draft form and, as I say, will be made available.

The Clean Water Act forum: What I wanted to do was highlight some specific issues, some specific comments that we heard. It's not that TORC is particularly taking a position one way or the other, other than to strongly support the action to protect and provide safe, secure water. These comments are what we heard at the forum and would put them to the committee in terms of not necessarily recommendations but observations.

The comments generally fall into issues or concerns in three key areas. One would be technical studies, essentially comments reflecting the need to ensure integrity in technical research and well data, focusing on the need for accurate groundwater and scientific data. We heard from the groundwater association and some of their well data issues, some of their scientific information, and that comment certainly did come through clearly.

Secondly, the importance of the transfer of technical knowledge to the public: educating, mentoring and coaching the community to develop a level of ecological and scientific understanding and competency. If we want this truly to be a bottom-up approach to getting community involvement, the public as a whole, the community, needs to clearly understand both the issues and the actions being taken.

We did hear from the aboriginal community and their recommendation that aboriginal traditional knowledge be considered in terms of this very critical water issue. There certainly is a lot of information, a lot of traditional knowledge and experience in that sector.

Thirdly is that appropriate rationale for mapping vulnerable areas of threats be used; mapping to be based on science and unique geological features in the landscape, realizing that fracture zones in unique geological features create some interesting changes in terms of the science of water flow.

The second main issue and concern area did revolve around the voluntary versus the regulatory factors, the comments being related to the need to ensure fair representation of all interests on source water protection committees, realizing that farmers and landowners in rural areas are key stakeholders, municipalities are, individual businesses are and organizations are. So the fair representation issue is very critical.

Secondly, the buy-in from local landowners in terms of making the act and the objective, or achieving the objective, of safe, secure water is critical. Clearly, the

message was in terms of offering incentives and using the incentive approach as a means of gaining landowner buy-in.

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Thirdly, the balance between regulatory and non-regulatory actions: Farm stewardship, the environmental farm plans—I think we've heard much of that. There certainly was strong support for that voluntary approach as opposed to specifically the regulatory approach.

Fourthly, the clarification of authority structure and the process of regulation came through on a number of occasions, between the source water protection authority, the committees, the municipalities clearly understanding their respective authorities.

The third key issue and concern did relate to and revolve around funding and compensation, the need to ensure compensation to the farmers, the landowners involved, appropriately compensating these individuals—certainly compensation for loss of productive land as a result of actions. The constant theme of public funding and support in exchange for environmental services provided by landowners: Essentially, the thought is, whoever benefits should be paying.

Lastly, thank you for the opportunity to share, and we're certainly making the offer to the Ministry of the Environment that TORC would be willing to assist further.

The Vice-Chair: Thank you for your presentation. We now have time for questions. We're going to start with Mr. Wilkinson.

Mr. Wilkinson: Harold, thanks for coming in. TORC does a wonderful job representing not just rural Ontario, but being a strong voice and a very well-thought-of, respected voice in our deliberations. I know the forum that you had—we were very happy that our ministry was able to participate in that and make sure that we could get to the facts of the matter.

Just going over your concerns, you're right: It's all based on the science. But your comment is, "It's great you have to do the science, but we also have to make sure the people have a level of awareness of the science so that they're comfortable with it"; in other words, that it isn't presented in such an overly complex way by a whole bunch of people with Ph.D.s that we can't actually have the people whose water is affected understanding it. So a communications challenge is kind of your caution for us to be able to do that. The help of your organization, making sure that we're getting that right, is important to us. I think the minister has indicated the need for us to be more collaborative as the first choice, and then ultimately, if there is a real problem, obviously the government has power to act. But that should be the last resort, not the first, as we work collaboratively.

I was wondering if you could comment, for myself as a rural member, but particularly for urban members, on this culture in rural Ontario about collaboration and how incentives work, the kind of plans that we have. I know we were talking about peer review in Perth county, the irrigation situation, the common committee they have in Norfolk, environmental farm plans. Maybe you could just

help our urban members understand how that really works here.

Mr. Flaming: I think certainly the farm community, the rural community are strong advocates of the environment and have done, in many cases, an excellent job in terms of being good stewards of the land, good stewards of the environment through a voluntary approach, the voluntary mechanism's assistance and incentives, to help them share the burden of implementing measures to improve watercourses to prevent pollution in any form or manner. That certainly is a preferred option. If the agricultural community is polluting the environment, they are going to be at risk. So they have something themselves to benefit from it.

The Vice-Chair: Mr. Murdoch.

Mr. Murdoch: Thank you very much for your presentation. It was a little different, and we like to see that.

I'll go back to the compensation. You mentioned in there where farmers or landowners, whoever they may be, would have to be compensated somehow for the land that may get taken out of production, but there are also going to be the costs of a whole lot of regulations, if this is what has to happen. So far, it looks like they may be handed on down to the municipalities, and then there's going to be a cost there, because the municipalities, of course, get their money from the taxpayers, and in rural Ontario we don't have as many taxpayers as maybe they might have in the bigger cities, and this bill is to protect water for everyone in Ontario. We've been sort of hammering this here, and I can't seem to get the guys on the other side just to come up and say maybe that's a good idea, but we think maybe the province should be picking up the cost for this bill because it does represent everybody in Ontario, not just rural Ontario.

Mr. Flaming: Certainly what we heard during the issues forum was the concept of those who benefit pay, and that was an overriding comment and observation, that as a society we have a responsibility to follow through with that concept.

Mr. Murdoch: Thank you.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thanks for making this presentation today. I certainly think that it makes sense to have those who benefit pay some, and I certainly think it makes sense to have the province contribute substantially because the whole province benefits.

What do you think, though, of the idea that polluters should also pay? If you pollute a stream, causing a hazard, should you not contribute to the cost of protecting that stream?

Mr. Flaming: Yes, I do believe there is a rationale for that. Certainly if someone is breaking the law, there is that responsibility in terms of shouldering that responsibility as well.

Mr. Tabuns: Even if they're not breaking the law, but if they allow something to happen, morally are they required to try and protect the common good?

Mr. Flaming: I would suggest yes.

The Vice-Chair: Thank you very much for your presentation.

BRUCE COUNTY FEDERATION OF AGRICULTURE

The Vice-Chair: The next presentation will be by the Bruce County Federation of Agriculture.

Thank you very much for presenting to the committee on social policy. You may start any time. You have 10 minutes' speaking time, five minutes for questions.

Mr. Robert Emerson: Good afternoon. The Bruce County Federation of Agriculture—BCFA—represents the voice of more than 1,400 farm families in the county who are members of the Ontario Federation of Agriculture, OFA. Our role is to represent farmers on matters of local interest as well as to bring local perspectives to broader issues. As such, we wish to state our full support for the position of the OFA and the Ontario Farm Environmental Coalition with regard to the Clean Water Act.

We appreciate the opportunity to provide comments to the committee hearings on Bill 43. In this brief, we will highlight some points of particular concern to farmers in Bruce county. We have five points here.

(1) Farm landowner representation: The makeup of the local source protection committee will be such that a broad cross-section of society is represented. While we appreciate the need for a variety of interests to have input, we believe that the impact of regulations to be developed under the Clean Water Act will be felt primarily by the landowners, who, in Bruce county, are generally farmers.

BCFA strongly recommends that a majority of members of the proposed local source protection committees should be farmer landowners.

(2) Compensation for loss of use of land: The potential regulations to be developed under the Clean Water Act will target primarily land surrounding municipal wells. There is potential for new regulations to remove this land from agricultural production or greatly restrict the allowed uses. Again, this is land owned and operated by farmers, who cannot afford to lose production from a portion of their business assets.

The position of BCFA is that farmers should be fully compensated for loss of use of any lands as a result of new regulations under the Clean Water Act. The amount of compensation should be sufficient to allow the farmer to replace the land restricted or taken out of production.

(3) Cost of compliance: Regulations under the Clean Water Act have the potential to create new costs for farmers/landowners while not conferring any direct benefit back to the farm operation. Costs for compliance should not be borne by the individual farmer. BCFA requests that any costs associated with compliance to new regulations under the Clean Water Act be fully compensated by the provincial government.

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(4) Limits on scope of regulations: As we learned from the tragedy at Walkerton, many factors come into play in the delivery of safe drinking water. In his report to the Walkerton inquiry, Justice Dennis O'Connor

recommended the protection of source water as only one of five levels of protection for municipal drinking water. It is important that the Clean Water Act does not become an attempt to protect all water everywhere. This would help control the size of protection areas and limit the impact on farmers. BCFA urges that the regulations developed under the Clean Water Act must be confined to addressing the protection of municipal wells in a reasonable manner.

In conclusion, the Bruce County Federation of Agriculture believes in the principle that those who stand to benefit from restrictions placed on others should pay for the impact of those restrictions. As such, the consumers of municipal drinking water and the government mandating the protection of water should bear the full cost of compliance. There should be no net cost to farmer-landowners arising from the implementation of the Clean Water Act.

Respectfully submitted by myself, Robert Emerson, president, Bruce County Federation of Agriculture.

The Vice-Chair: Thank you very much, Mr. Emerson, for your presentation. Now we open the floor for questions. We're going to start with Mr. Murdoch.

Mr. Murdoch: Thank you for coming today and presenting a brief that sort of spells it out. It's pretty hard to ask you a question, because that's everything we've been trying to say all day and asking everyone else who comes in here.

The only thing I might ask is, would you feel more comfortable with this bill if, number one, the government puts in the bill that they're going to pay the cost? I assume you would, because you've asked for that. The other one would be, a lot of the regulations could be put in the bill before it's passed. I have problems with that with a lot of bills, not only with the government of the day, but whatever government seems to be in force.

We pass enabling legislation, but the regulations come later, and we don't get a chance, really, to debate those regulations. In a bill of such magnitude as this one, I would feel more comfortable—and I just wonder what you'd think—if some of the regulations, some of the major ones anyway, were already included before we actually vote on this bill for third reading. Would you be more comfortable?

Mr. Emerson: Thanks, Mr. Murdoch. I guess I would concur with the major regulations, if they were spelled out beforehand. We realize fully that there could be minor amendments as we go along, and input on that should come from the committees, as well as the conservation areas that are dealing first-hand with it.

Mr. Murdoch: Thank you.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Mr. Emerson, thanks for coming and making this presentation today. I support the idea that farmers and other landowners should have financial support to ensure that our water is protected, but I'm trying to find the balance here, and I'd like your thoughts.

If there is a well on your property that is affected by a creek flowing through a farm nearby, and that nearby

farmer dumps his used oil into that water, and somehow that gets into your water system, should you be entirely responsible for the cost of cleaning up the water coming onto your land, or, alternatively, should that person be restricted from causing contamination, because it's very cheap for him if he just dumps the oil and it's gone?

Mr. Emerson: Certainly, we don't see these practices being conducted very much on an everyday basis. I go back to that situation. Accidents will happen. Farmers do everything in their power on a daily basis to prevent accidents and pollution. I guess the other thing we need to be aware of is that for every manure spill that we hear of in the press or that happens, there are seven municipal spills of much greater magnitude that happen at the same time. As I state, as farmers, we do everything within our power on a daily basis to be good stewards of the land.

I wouldn't know of a neighbour upstream from my place who would be deliberately contaminating with oil.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, Robert. As the member for Perth county, I think we'd agree. If a neighbour of ours ever did that, we'd run him out of the county pretty fast, if someone did that deliberately.

Mr. Emerson: Local action would be taken.

Mr. Wilkinson: Local action, that's right.

I just want to go to this question in your position about making sure we have a majority of farmers on a source water planning protection committee. Of course, these are pretty large. We're still working on this, so we appreciate the input. I think there will be 16 people on the committee; the minister would appoint the chair; the medical officer of health should be ex officio on that committee. That was a pretty good idea.

But you're saying having over half. We're looking at a third being from the municipalities and a third of the people would be sectoral. So that would be, like, industry; right? And of course, Bruce county would be agriculture. And a third would be just the general public at large, the people who drink the water, because we do have people who are not farmers, but they sure live beside them. But do you think the minister should go beyond that and make sure that—I mean, a lot of our municipal people are farmers; right?

Mr. Emerson: That's correct, and that's the reality.

Mr. Wilkinson: Yes, exactly. But do you think we should go that next step and be very prescriptive to make sure that that happens? How far should the minister get down in the weeds on this to make sure that we have that buy-in from the local community? What you were saying is that it's got to be a majority, so it would have to be nine out of the 16.

Mr. Emerson: That's an interesting thought, the way you present it. I guess we're suggesting that at least half should have an agricultural background, a knowledge of agriculture, as well as farmer-landowners. More specifically, in this area, this is a rural area. I think it would be for the benefit of the area to follow this scenario in this regard.

Mr. Wilkinson: And with that we'd have much better buy-in from the public at large; right? Because they would feel that their interests were represented by the committee for the terms of reference, the assessment report and for the source water plan that would come out of this. Of course, this thing will be implemented over years; it's not tomorrow. This is just the framework to get that going and fulfill what Justice O'Connor suggested or recommended strongly that we do.

Okay. We'll definitely take that back to the minister. We appreciate it.

The Vice-Chair: Thank you very much for your presentation.

Mr. Emerson: I wish to say it's been a pleasure to have the opportunity to make this presentation. Thank you.

The Vice-Chair: Likewise. Thank you for coming.

LAURA MURR

The Vice-Chair: The next presentation will be by Dennis Murr and Laura Murr. Are you by yourself, or is somebody else coming?

Ms. Laura Murr: My husband was unable to attend, so I'm speaking on our behalf. I'm sorry I couldn't make my submission to you in writing, but my computer crashed at midnight last night. These things happen; right? So I was forced to reconstruct my speech.

Honourable MPPs, thank you for allowing me the opportunity to speak to you today. My name is Laura Murr, and I have been advocating on the protection of water quality and quantity for over 15 years. I have provided you with a brief resumé of my activities. I am known as an activist, but I prefer to think of myself as a realist. I realize that our population is growing and that our water resources are shrinking.

My husband and I are in complete support of the Clean Water Act. It is long overdue. We must act now to protect our groundwater and aquifers. Delay is no longer acceptable, given the hundreds of thousands of contaminated sites across the province that pose a significant threat to our present and future drinking water. As well, every day, somewhere in the province, a new planning application or water taking is approved that could jeopardize our water. We strongly believe that the province needs more and stronger regulation of activities related to water, not less.

On my journeys through public meetings related to water and natural heritage protection, I met a toxic dumper who illegally dumped waste for companies he described as some of the best corporate citizens in the province. I have sympathized with a family devastated by the loss of their brook trout habitat in their stream because of an illegal drilled flowing artesian well. Although the MOE was aware of this activity, no charges were laid under the Ontario resources act or the federal Fisheries Act.

All along, I have heard that members of the public want to work hand in hand with the government to

preserve our water for future generations, but we are frustrated. The politicians, through cutbacks, have gutted the Ministry of the Environment and natural resources staff and the conservation authority funding. It appears that a revolving door now exists where ministry staff are moved so frequently from area to area that no collective history of the local area exists in ministry offices. This leads to piecemeal, poor planning decisions and lack of proper review of consultant reports paid for by the proponents.

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Once the Clean Water Act is enacted, we believe that the government must provide adequate funding for revitalization and revamping of the MOE, MNR and conservation authorities. Money should be made available for a major thrust by the agencies to educate the politicians, all planning and engineering staff, and private consultants.

Funding should be supplied to update and implement existing watershed studies. In Guelph, for instance, the Torrance Creek, Hanlon and Mill Creek watershed studies have never been fully implemented. How can we plan on a watershed basis when we are not even implementing the recommendations of our existing watershed plans? No further funding for new water-related infrastructure or permits to take water should be given to regions or municipalities until watershed studies are completed for all watershed and sub-watersheds, and earlier studies are updated. The MOE has spent hundreds of thousands of dollars on these studies.

In some cases, the municipality, city staff and agencies have failed to integrate the studies into new development applications, with little post-development monitoring and no remediation of negative impacts. In Guelph, in Puslinch township, no watershed studies have been completed for the Irish Creek, the lower Eramosa River and the Speed River. This, in spite of the fact that the city of Guelph is currently undertaking a master plan on the major expansion of their waste water treatment plant which outlets to the Speed River. To expand our sewage treatment capacity without a clear understanding of the Speed River watershed is simply poor planning.

We support the cleanup of contaminated sites and we believe more money is needed. Let the polluter pay. For orphan sites, a priority list should be compiled for MOE funding.

I would like to share our personal experience with source water protection. In 2005-06, my husband and I were forced to take the city of Guelph, which is both the major landowner, developer and plan approval authority for the 650-acre Hanlon Creek Business Park, to the Ontario Municipal Board in order to protect the Downey Road well from the potential of contamination from the proposed industrial uses. The Downey Road well currently supplies 16% of the city of Guelph's drinking water. It is located 800 metres from the edge of the new and largest industrial park in the city of Guelph. We hired Dr. Emil Frind, who testified at the Walkerton hearings, and other expert consultants. Through the OMB medi-

ation, we negotiated the removal of some of the more potentially contaminating industries, such as the metal fabricators, within the estimated five-year time of our well. The technical steering committee has recommended that certain toxic substances, such as DNAPL, be banned within the five-year travel time of municipal wells.

The protection of the Downey Road well would have been a given if the Clean Water Act had been enacted in 2005. Because of our experience with the city of Guelph, we have grave concerns about the city's role in the enforcement of source water protection. There should be no further delays in passing this act. We do not want to take any more water-related planning issues to the Ontario Municipal Board. We have already spent \$15,000-plus of our own money to protect the public water supply and the natural heritage systems dependent on this water.

Next, I have submitted a copy of Sage versus the corporation of Wellington county. This case of a single rural well illustrates the following points. The results of this Ontario Superior Court of Justice decision establishes that a landlord—in this case, the county of Wellington—must maintain a private well and provide clean drinking water to a tenant. The tenant asked for a well to be repaired and upgraded after coliform and E. coli bacteria were present in several water samples submitted by the tenant to the local health authority. The tenant subsequently was served an eviction notice under the Tenant Protection Act. The court decision established that a failure to provide safe drinking water to a rental premises is a serious breach of statutory maintenance obligations and duties.

When the Ontario Rental Housing Tribunal ordered the eviction of the tenants, it did not consider the legislative enactments or provincial standards, and did not have the specialized expertise in the area of health or environmental law to make a correct decision with respect to the provision of clean water to a rental premise. This court decision demonstrates a public interest environmental case and shows there to be a public benefit from the significant litigation.

There is a need to promote access-to-justice legislation and intervener funding. There is a need to provide an indemnity fee arrangement so that citizens of modest means can pursue their right to have a clean drinking water supply through the legal system. This case was determined to be important by the respected legal firm representing the tenants, and there was a willingness to pursue this case and appeal on behalf of the tenant family without assurance of payment. Legal firms taking on these important cases should be recognized and compensated.

This case illustrates the need for public accountability and the education of officials of all levels of government and various agencies who make decisions that impact water and the public. Please fund the MOE so it can provide this valuable education process once the Clean Water Act is enacted. They should be required to make a public presentation to council members and the public.

We support the recommendations of the Canadian Environmental Law Association and the Sierra Legal

Defence Fund recommendations. All water-taking should be subject to the Clean Water Act, and it must include the entire province. I have provided a map, for example, of the rural Irish Creek Estates subdivision, showing the large capture zone of their single communal well. This is an example of why all rural areas need to form source water protection committees. Will local farmers be impacted by this development? We don't know.

We would like to see full cost recovery via development charges for the municipal and agency reviews of the reports in support of new development. Let the developers pay. They have the money. They make a profit.

Finally, I would like to say that all of the legislation—due diligence, voluntary compliance—has not to date protected our surface or groundwater supplies. It is now up to you, our elected provincial legislators, to enact a strong act and regulations.

I will be submitting further written comments before the closing date on the makeup, role and responsibilities of the source water protection committee. Thank you.

The Vice-Chair: Thank you, Laura, for your presentation. Now we open the floor for questions. We'll start with Mr. Tabuns.

Mr. Tabuns: Thank you for coming down and making that presentation. It sounds like you've gone through some pretty horrendous stuff.

Ms. Murr: Yes, I have.

Mr. Tabuns: Are there any thoughts you have on the responsibility of the province to contribute to the funds necessary to correct these problems that have been identified in the course of testimony today?

Ms. Murr: I know from talking to the ministry staff that they (a) don't have the staff, and (b) don't have the time, because they don't have the staff to properly review reports that are submitted on behalf of development applications. I personally review these reports because I've commented on many development applications, particularly in the Hanlon Creek watershed. I've been participating in that process since 1994. I really believe that the time has come that we have to go back to ministry review, because they are independent and they work for us, the public.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming in, Laura. You've raised a number of issues, but I'm just going to focus on the Clean Water Act part of it. I think your testimony had to do with frustration, as a member of the public, with the process. We can have a spectrum of instruments to address the public interest, to make sure that people can become engaged in that. You can have information, education, consultation, dialogue; if there's conflict, how to have an alternative dispute mechanism; and then, finally, the environmental review tribunal that settles a lot of those things. Do you see a place where this needs to be enshrined in the act, that the minister should be more prescriptive in this act, through amendment, to make sure that those kinds of public consultation processes are listed out in regulation? Or should it be enshrined in the legislation? That's my question.

Ms. Murr: I'm not sure from my perspective what the difference is, but I believe the strongest enshrinement possible should be necessary, because I know how poor, in some cases—for instance, for the Arkell Spring's environmental assessment process there was not a single public meeting. That's why my husband and I were forced to call for a part 2, for a full bump-up to an environmental assessment, because we believed they had discounted water conservation as one of the options to double the water-taking at Arkell. If we had been involved in the process all along, we wouldn't have had to take those steps.

1710

The Vice-Chair: Mr. Murdoch?

Mr. Murdoch: Yes, one question: You mentioned that you didn't feel that the Ministry of the Environment is getting enough funds to run properly. Now, if this bill passes, the way it sits now anyway, it looks like the enforcement rules will be handed down to the municipalities. That would mean there's going to be less responsibility for the Ministry of the Environment, and we don't know whether there's going to be any money handed down from the government to municipalities to hire these enforcement officers, or they may go to the conservation authorities. Do you have any comment on that?

Ms. Murr: I believe that enforcement should lie in the hands of the government regulating body, the Ministry of the Environment. I believe that the enforcement at the municipal level relates to the will of the politicians to protect the local groundwater supplies.

Mr. Murdoch: Okay, that's what I wanted to know, because it looks like that's what's going to happen.

The Vice-Chair: Thank you very much for your presentation.

Ms. Murr: Thank you for allowing me to talk today.

The Vice-Chair: Thank you for coming.

COUNTY OF GREY

The Vice-Chair: Now we'll move to the last presentation. It will be by the corporation of the county of Grey.

Welcome to the social policy committee. You have 10 minutes' time for speaking and five minutes for questions. So when you feel ready, you can start.

Mr. Bob Pringle: Thank you. I believe we have enough copies. Everyone has one? Good.

Good afternoon, Vice-Chair and members of the social policy committee. I'm Warden Bob Pringle, representing the county of Grey, and I am pleased to be here today to speak to this very important issue.

I'm also pleased that the government has recognized the importance of coming to rural Ontario to hear the comments and concerns raised by members of the public as well as representatives from various levels of government concerning the Clean Water Act and its implementation.

The county of Grey has been actively involved throughout the evolution of Bill 43, as well as its predecessor, the Ontario Drinking Water Source Protection Act, which had been released back in June 2004. The county submitted comments through the Environmental Bill of Rights posting in January of this year and has also supported the position put forward by the Association of Municipalities of Ontario. A copy of the county's January submission is attached as appendix 1 to this presentation.

The draft legislation states, "The purpose of this act is to protect existing and future sources of drinking water." No one will disagree that the protection of our drinking water sources from a quality and quantity perspective for current and future generations is a noble goal and one which must be pursued. Key in all of this is who will be responsible, how it will be achieved and, more importantly, who will be responsible for the long-term costs associated with activities referenced in Bill 43.

The funding program announced, giving conservation authorities \$16.5 million during 2006 to put staff and resources in place to gear up for the overall program, is, of course, encouraging news as we all know that conservation authorities are funded through their member municipalities, and if left to the local municipalities, this would be a significant impact on municipal levies to conservation authorities. The additional \$51 million over five years to be paid to municipalities in order undertake the necessary technical studies to assist in the implementation of the Clean Water Act is also welcomed but will not be sufficient in the long term.

One just needs to look at the size of some of the watersheds in Ontario and, in some cases, the lack of adequate current information to realize that significant work and money will be required to establish consistent base data for these watersheds. In Grey county, there are four conservation authorities covering lands within our boundaries: Saugeen, Grey Sauble, Nottawasaga and the Grand River Conservation Authorities. At this point in time, the Saugeen Conservation Authority would appear to be taking on the lead source protection authority role.

As with any legislation, the respective ministry is to establish regulations which are to set out the guidelines to implement the legislation. Without knowing the particulars of the regulations, it is difficult to determine all the impacts of the legislation. There are to be terms of reference developed for the preparation of assessment reports, which will then require the preparation of the source protection plan.

The parameters of what will constitute an assessment report are extremely broad. Once the vulnerable areas of watersheds are identified and then the existing and future drinking-water potential hazards within these areas are identified, there is concern that normal farm practices throughout rural Ontario may be negatively impacted. This will only be known, however, once terms of reference are prepared. The provincial policy statement under the Planning Act stipulates the protection of agricultural land for agricultural purposes. However, if that land is determined to be within a vulnerable area of a

watershed, will normal farming activities, such as manure spreading, application of fertilizers etc., be curtailed?

The proposed Clean Water Act sets out the requirements for the establishment of a source protection authority whose membership is to consist of no more than 16 individuals. Meaningful municipal membership on these authorities is imperative, as the implementers of the eventual plans will be the municipalities through their approval powers assigned under the Planning Act. The legislation is clear that all decisions shall conform to the source protection plans, so it is important that the municipalities accept and endorse those plans. Unless municipalities are at the table throughout the preparation and approval stages, the implementation of the source protection plans may prove difficult.

From the county's previous submission to the EBR posting, five main areas of concern can be summarized as follows:

(1) The framework set out for the preparation and approval of terms of reference, assessment reports and then source water protection plans would appear to be cumbersome and time-consuming. As the Minister of the Environment appears to hold the ultimate approval authority, with amendment ability of the entire process, the matter must be streamlined.

(2) Duplication of an approval process, where municipalities have the ability under the Planning Act to address source water protection through land use designations without the need for another layer of planning approval by another body, is a very grave concern. The source water protection plans should be prepared, but then municipalities need the ability to incorporate those plans through the traditional land use planning documents.

(3) The membership on the source water protection committees needs to be revealed prior to final implementation of Bill 43 to ensure adequate local representation, including municipal representation, is provided.

(4) The issue of funding to support the implementation of the programs in the long-term has not been adequately addressed. The province must guarantee 100% provincial funding for the implementation of source water protection planning.

(5) The apparent lack of integration with other existing provincial legislation, including but not limited to the Planning Act, Nutrient Management Act, Ontario Water Resources Act and Farming and Food Production Protection Act, must be further investigated to ensure consistency and transparency in the process.

I would like to thank the committee on behalf of the county of Grey for listening to our concerns and comments. It is hoped that the government, through the finalization of the bill and implementing regulations, will address the above comments as well as recognize the financial limitations of rural Ontario to fund the implementation of the proposed Clean Water Act without the long-term assistance of the provincial government. Thank you.

The Vice-Chair: Thank you, sir, for your presentation. Now we'll open the floor for questions. We'll

start with the parliamentary assistant for the Minister of the Environment, Mr. Wilkinson.

Mr. Wilkinson: Warden, thank you for finding time to be with us today. Just going with the five points, I want to share with you some of the comments I have from going over them. On number 1, I see your point that, if the minister ultimately has the role, why do you have all of this? Really, the intention of the bill is to make sure that there is a consultative process before it gets to the minister, so it isn't this kind of top-down Toronto—I know it takes more time to do it that way, but we think that there will be better buy-in from people.

1720

In regard to the planning, I hear you there, but we had the county of Oxford come and say the opposite. Their testimony, because they've been doing a lot of source water, is that they feel they do have gaps, that the Planning Act doesn't give them the ability to deal with it. I know the minister, in regard to item number 3, is thinking about being more prescriptive, that on the committee, a third would be mandated under regulation to be from the municipal sector, though there'll be some concern where you have a municipality that's in a lot. So we had a recommendation that it should be upper tier, that if they can only have one person, it better be somebody from the upper tier to represent the interest.

I can understand the point about the 100% funding, though we've had quite a bit of testimony even from farmers about the need to cost-share. They think that might be a better way of approaching it. I know in Oxford and Waterloo, it's worked.

Just to clarify number 5, about how this act—what this act says is something quite unique. It says that if there's a question of primacy over other acts, whichever act does the best job of protecting the water has primacy, even if it isn't the Clean Water Act. So I think that's kind of the intention of the bill. I know it's not a question, but I know you were interested in trying to get some clarity to take back to our friends in Grey county. Thanks, Bob.

The Vice-Chair: Would you like to respond?

Mr. Pringle: Well, no. They're interesting comments, that's for sure. If we find two counties that aren't in agreement, especially in regard to agricultural issues, it certainly is understandable. It's hard for you, as politicians, to realize which way we should be going. However, I will take those comments back.

In regard to number 5, that would seem reasonable and fair. I guess the concern would be if somebody is out there and trying to farm, how do they know? They may go ahead and assume, "Well, because I've got a nutrient management plan, I can go ahead and do this," and then find out that there's an MOE official standing at the edge of the field and, all of a sudden, you're in trouble.

Mr. Wilkinson: We're trying to change that to go to a more risk-management approach, rather than the permit official. We've heard that loud and clear in consultation and through this process as well. I take your points exactly, and I think we're trying to make sure that permit is the last thing, not the first thing.

The Vice-Chair: Thank you, Mr. Wilkinson, for the questions or the comment or remark, whatever. Now we move to Mr. Murdoch, who claims you gave his remark.

Mr. Murdoch: That's understandable that John would want to use all the time, especially with the comments he made. He obviously has been at a different meeting than I've been at. I didn't hear anybody come in here and say they didn't want you guys to pay for this. That's a bunch of crap, and you know it. Coming in here and saying, "Oh, we had various people telling us"—cost-share my ass. They never said that.

Interjection.

Mr. Murdoch: Well, when he's going to go on like that—come on.

The Vice-Chair: Come on, Mr. Murdoch.

Mr. Murdoch: We're supposed to be here—nobody wanted cost-share. They said that the government wanted to pay 100%, exactly what number 4—

The Vice-Chair: Order, please.

Mr. Murdoch: Well, I get a little upset when they say things that actually aren't true, and that wasn't true.

So, Bob, you were right on with number 4, and I would say 99%. Oxford, yes, they fumbled around with it, but I didn't really know where they were coming from, and I don't know whether they did or not. They were the only one that came in and probably said to the government, "You're not doing a bad job," so I guess he's got to comment on that.

But everybody else who came in here said that you must pay for this, and don't try to wishy-washy it. They want 100% from you guys if you're going to put this through.

I think the question would be, then, would you not want that in the bill before they pass this bill, because you're not going to know what's going to happen after the bill?

Mr. Pringle: That's right. That would be a concern, and if we leave the meeting by giving five of our concerns, you're right, Bill, number 4 would be the one that we want to leave you the impression with the most, that 100% funding would be required.

The Vice-Chair: Thank you, sir. Mr. Tabuns?

Mr. Tabuns: Thanks very much for coming in and making a presentation. In your assessment of implementation costs, did you at any point develop a number as to what you expected to be the scale or scope of implementation costs?

Mr. Pringle: Within the county of Grey?

Mr. Tabuns: Yes.

Mr. Pringle: No. We have not done anything in that regard.

Mr. Tabuns: Do you have any sense of whether you're talking about a 10% increase in your costs or 100%?

Mr. Pringle: I think it would be far more than 10%, anyway. We'd be closer to the other number that you mentioned.

Jay Pausner, senior planner with the county, is with me as well. Jay, we've done nothing as far as number crunching, have we?

Mr. Jay Pausner: Not to my knowledge.

Mr. Tabuns: Okay. So you see it as a risk, but you don't have a quantification at this point?

Mr. Pringle: Well, I've heard the figure of \$7 billion used—

Mr. Tabuns: Not for your county, though, I assume.

Mr. Murdoch: Right on, right on. He knows. You've got to come to Grey to find out what's going on.

The Vice-Chair: Mr. Tabuns, any questions? You have more time.

Mr. Tabuns: No. That's it. Thank you.

The Vice-Chair: Thank you very much for your presentation.

I want to thank all the presenters today—they were excellent—and also the members. It was a very civil dialogue, except the last minute. Anyway, we'll adjourn until tomorrow at 9 o'clock in Cornwall.

The committee adjourned at 1725.

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Mr. Bill Murdoch (Bruce–Grey–Owen Sound PC)

Mr. Charlie Bagnato

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Mercredi 23 août 2006



Standing committee on social policy

Clean Water Act, 2006

Comité permanent de la politique sociale

Loi de 2006 sur l'eau saine

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICY

Wednesday 23 August 2006

The committee met at 0904 at the Ramada Inn and Conference Centre, Cornwall.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts /
Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to the third day on Bill 43. We're today in Cornwall, and we have many presenters this morning. Our procedure is 10 minutes for speaking time and five minutes will be divided among the three parties for questions.

Before we start today, we have the member from Cornwall, Mr. Jim Brownell, who wishes to address the committee and the members.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): Thank you very much, Mr. Ramal. Certainly I welcome you, as Vice-Chair, and the standing committee on social policy here to Cornwall and to the riding of Stormont-Dundas-Charlottenburgh.

Being the representative here, it's a pleasure for me to welcome this all-party standing committee to have this dialogue, this sharing of ideas and whatnot on Bill 43, the Clean Water Act. To all of you, I wish you a good day. To all of those who are here making presentations, I welcome you. This is what committee work is all about: to go around the province after second reading of a bill to gain insight, understanding and opportunities of hearing from you so that we can work on a bill and make it better. So I just welcome you all here.

Unfortunately, I have another event. We have here in the riding today an economic Building Tomorrow's Workforce dialogue over at the Best Western that I'm co-chairing with Richard Patten, the PA to the Minister of Economic Development and Trade. I will have to leave early, but I want to thank you and welcome you all to the riding.

The Vice-Chair: Thank you, Mr. Brownell, and thank you to everyone.

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Mercredi 23 août 2006

DUNDAS COUNTY CATTLEMEN'S
ASSOCIATION

The Vice-Chair: The first presentation will be by the Dundas County Cattlemen's Association. You can start, sir, when you are ready. You have, as I mentioned, 10 minutes of speaking time and five minutes for questions. You can start.

Mr. Ron Wilson: Thank you, Mr. Chairman, honourable members of the provincial Legislature, ladies and gentlemen.

By way of introduction, I want to let you know my name is Ron Wilson. I live near Morrisburg. I've run Stillmeadow Limousin farm, breeding purebred Limousin seed stock, since 1970 up until this past weekend, I should add. I basically got out. I'm down to one cow now.

I am the secretary for the Dundas County Cattlemen's Association. I've held that position for a few years now. I have held other positions with them over the years, and I have 30 years of work with the association at the county level.

Dundas County Cattlemen's Association's active members are primarily the producers of beef. We include cow/calf enterprises for the most part, some back-grounding operations, and feedlot and finishing. We also include—and this is important in this part of the world—the dairy farmers who sell their cull cows. We have a very important veal production in our county as well. So we're the producers of steaks, roasts, hamburger and ground beef, and certain processed beef products that the consumers get. The average age of our members is approaching 60 years.

Why do we have an interest in Bill 43? Well, as beef producers, we own and manage a significant land area that's used to produce pasture, hay and silage production for stored feed, and grain production. Many farms also include woodlots and rough, unimproved land. So in short, we have a lot of land tied up, and it seems that a lot of Bill 43 is going to have important consequences for landowners.

At the outset, I want to tell you I am not a specialist in the subject matter under consideration. I've not studied the bill in detail. What I intend to do in the next few minutes is simply raise a few issues and show the need for a more prudent approach, and I'll offer a couple of suggestions for proceeding.

Farmers generally, including beef producers, have a long-standing reputation as good stewards of the land. We were probably the original environmentalists, as we depend on long-term co-existence with nature for our livelihood and as a place to live and to raise our families.

In recent years, the beef producers have been hit by more than their share of challenges. Probably the cause of the Nutrient Management Act and the cause of Bill 43 now is the Walkerton tragedy, as it's often referred to. Many politicians and many in the media portrayed the beef farm as the villain, notwithstanding the fact that the beef farmer did everything right, according to the book, and should not be blamed, as I recall O'Connor's report.

We've had the Nutrient Management Act, with probably too much focus on manure and nutrient units. We've been hit by BSE—bovine spongiform encephalopathy—and the closed US border that devastated our markets. We're still trying to recover from that. We have a Canadian dollar that has approximately 50% appreciation against the US dollar in the last three years. And now we're faced with Bill 43, the Clean Water Act. We've had more than our share of challenges.

0910

I just want to raise now a couple of examples and issues from the current bill that Dundas cattlemen wanted you to be aware of.

(1) At the outset, Dundas cattlemen support the principle of protecting drinking water sources. We have no quarrel whatsoever with the intent of that. However, we do find some confusion and perhaps a little over-exuberance in Bill 43, particularly with respect to "future sources" with no time frame or plan in mind. Any person can theorize that all water everywhere is a future source. Is this what the government really intends? Why not limit the future to three or five years or some reasonably predictable time frame, and for areas for which approvals and plans exist, instead of this all-encompassing future?

(2) MOE—that's Ministry of the Environment—documents say that Bill 43 was developed in response to Justice O'Connor's Walkerton inquiry recommendations and "is part of the government's commitment to ensure clean, safe drinking water for all Ontarians." At the same time, other documents from the ministry say that the focus is "municipal water supplies." I want to know, what is the truth? Is the intention to put further restrictions on my farming practices and on my farm well? Is it for all Ontarians, or is it for the municipal water supplies? It can hardly be one and the other at the same time, unless it really means everybody, in which case farms and rural wells are treated equally with urban centres.

I would remind you in this connection that the Walkerton tragedy was a bad combination of ignoring rules, of improper water treatment, of fabricating test results. It basically had nothing to do with farming practices. The other two cases cited in the cause for the bill—leaking landfill in Beckwith township and industrial solvent polluting water in Kitchener—also had no origin in agriculture, so we need not target agriculture as part of a solution to a problem that didn't exist.

(3) Establishing the permit official with unilateral powers to amend or revoke any condition of a permit or add conditions to a permit is clearly not an acceptable position for cattlemen employing what are already generally accepted procedures and practices along with due diligence—not acceptable, and particularly not acceptable when we're going to be charged a fee for that unnecessary action. In addition, the proposed permit officials would not have uniform, predictable and scientifically sound bases for their decisions, resulting in non-uniformity across Ontario.

If the act is to proceed, then a co-operative approach, including provincial funding to compensate cattlemen—and I say, agriculture generally—for implementing activities deemed necessary for the public good is the way to go. Such measures should be in the act. I understand from some of my reading that a January 2006 expert panel commissioned by the Ministry of the Environment, entitled Well Water Sustainability in Ontario, has suggested such a measure.

(4) Some neighbouring jurisdictions, such as Manitoba and Wisconsin, that compete with us in the North American marketplace have financial assistance assured by their governments. Why can such assistance not be assured here in Ontario? Why can it not be put in the act so that we will know that it's there? Our government suggests it will be a minimal cost to landowners. If that is the case, then it's a much less significant cost in the context of a provincial budget and it ought to be put in there. Farmers and other landowners in Ontario should not be asked to foot the bill for the public good, particularly for the urban dwellers, just because we happen to have operations on a fairly large land base. We should not be asked to have restrictions put on our operations or to incur additional costs that would in effect amount to confiscation without compensation.

Several ministry documents use wording like, "It's important that farmers or property owners or medium and small businesses know if they're located in a vulnerable drinking water area, and it's important that they become informed about their local source protection planning process and become involved." You should know that most cattlemen do not have the time, resources or the expertise to adequately do justice to this mismeasure while running their farms, and probably working off-farm to make extra income so that they can make ends meet.

At the same time, you should know that we in agriculture have our own elected representatives and employees of our associations. I would emphasize that if the act is to be passed, the best procedure would be for the government to listen to our organizations' representatives: organizations like the Ontario Cattlemen's Association, the Ontario Federation of Agriculture, the Ontario Farm Environmental Coalition, AgCare, the Christian Farmers' Federation of Ontario and so on. We have specialists who work for us, and I'm sure you know some of them: Chris Attema and Jamie Boles, to mention two names. I think you should deal with these people on

an open and frank basis and use their guidance in terms of improving the legislation and the subsequent regulations. Expecting individual cattlemen to try to make the best of an ill-conceived situation after the fact is not an acceptable way to go.

Several other organizations have indicated dissatisfaction with major components of Bill 43: the Ontario Mining Association, the Canadian Environmental Law Association and the Association of Municipalities of Ontario, to name a few. With such broad, negative attitudes, maybe it's time to take a look. It's not just a few of us.

Finally, there's a ray of good news. MOE documents included the words "if passed" as recently as May and July of this year. Obviously, the option exists that you've considered not passing this, and I say, "Wow, let's go that route. Let's not pass it." We don't need this act, and we can't afford it.

I thank you for the opportunity to address you today.

The Vice-Chair: Thank you, Mr. Wilson, for your presentation. Now we are going to open the floor for questions. We're going to start with Ms. Scott.

Ms. Laurie Scott (Haliburton–Victoria–Brock): Toby is going to go first.

Mr. Toby Barrett (Haldimand–Norfolk–Brant): Thank you to the cattlemen for that presentation. I'll just pick up on what you said: "We don't need this act, and we can't afford it." Justice O'Connor did not make a specific recommendation to have legislation like this. He did recommend that there could be changes to the Environmental Protection Act.

We've just come from Walkerton. We heard testimony there, and you made mention of the challenges of nutrient management, BSE and the high Canadian dollar. We heard testimony in Walkerton of dismal returns in agriculture, negative returns, poor commodity prices and the high energy costs. We're hearing about costs of this act. The figure of \$7 billion is being bandied about, and we're still trying to track down accurate figures from the government. We heard additional testimony yesterday that if you start adding in the cost of closing down abandoned water wells, gas wells and oil wells in south-western Ontario, you're looking at perhaps another \$10 billion on top of that. Apart from the debate of whether we need this act, I guess the question is, and I think you've answered it, can cattlemen afford this, given the lost equity of the last few years to begin with?

Mr. Wilson: Absolutely not. As you mentioned, negative incomes; beef producers have had that—I can give you an example from my own situation. I sell purebred breeding stock. My average price dropped by over \$800 per head following the BSE thing. That's a drop in my revenue. My cost went up, if anything, because I kept extra animals, and that meant extra feed, extra housing, extra veterinary services and other things, partly on the basis that officials on the south side of the St. Lawrence as well as on the north, from our Prime Minister to the US President, and Ann Venema, Secretary of Agriculture at the time, said, "Nothing wrong with Canadian beef.

We'll get back to a normal market as soon as possible—right away. We'll fast-track it." So I kept extra animals, expanded my herd, almost 100% expansion by last summer, for a market that still hasn't recovered. We just cannot afford it.

The Vice-Chair: Thank you, Mr. Barrett, for your questions, and thank you, sir, for your answers. Mr. Tabuns.

Mr. Peter Tabuns (Toronto–Danforth): Mr. Wilson, thank you for the presentation. You mentioned the stewardship fund in Manitoba. Could you talk a bit more about that and how farmers see that?

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Mr. Wilson: Unfortunately, I cannot. I'm not up to date on the details of their program. I just understand that they do have funding that's provided for in the act. It's not an annual allocation that comes up each year as a budget item; it's required according to their legislation, is my understanding. I think in Ontario's case, if we're going to impose new restrictions for the public good, it makes sense that the public should pay for it, not a few selected people because we happen to have fewer votes or whatever the case might be.

Mr. Tabuns: Fair enough. Thank you for that.

Mr. Wilson: If you'd like details on the Manitoba thing, I'd be happy to get them for you and make sure they're provided.

The Vice-Chair: The parliamentary assistant to the Minister of the Environment, Mr. Wilkinson, do you have any questions?

Mr. John Wilkinson (Perth–Middlesex): Thanks, Ron, for coming in. On the question on, "If passed," just so you know where we are, the government introduces the bill and then we debate it. Then the process here is that it goes to an all-party committee and we go around Ontario getting feedback. Your feedback is similar to what we're getting from some other people.

I think almost everybody has said that the intention of the bill is correct. My riding of Perth county is highly agricultural. There is nobody who cares more about safe, clean drinking water than our farmers and there's no one who is a better steward. But a lot of other activities go on as well. What this bill contemplates from Justice O'Connor is that people who are drinking the same water or using it, whether they take it from a river, from an aquifer or from the Great Lakes, come together and work together, based on science, to figure out the best way to protect it, because it would be cheaper to protect it than to let it get contaminated and then have to deal with it afterwards.

The issues you've raised are other issues about not so much whether we should do it but how we do it and make sure that it's fair and that the costs are borne fairly by everybody. That's why we appreciate the fact of your coming. So you would agree, then, that from a compensation point of view, we need to share this cost over the broadest group of people possible, right? Because your fear is that it would just be right on the person who

happens to have a farm beside a municipal well or something.

Mr. Wilson: Municipal well or the surface intake area. For example, if Cornwall were to take water from the St. Lawrence and process it to become their drinking water: My farm is upstream from the St. Lawrence River and there is tile drainage in my fields. A municipal drain runs across my farm. It goes into a creek and into the St. Lawrence River. I can theorize that some environmentally oriented individual, whether it's somebody who is employed or otherwise works in the government, raises the issue and says, "Oh, look. All those guys who are upstream from the St. Lawrence"—it's only two days, three days, five days; it's certainly less than a two-year or five-year time of travel to the St. Lawrence intake—"we're going to put restrictions on them." Therefore, Wilson has to get a permit from this permit official who shall be appointed under the current thing, and it has these options to both revoke and add conditions to my permit. They can tell me what I must do; not negotiate but impose and charge me a fee that I must pay. If I don't pay, it can be added to tax bills and whatnot, apparently.

Mr. Wilkinson: When the minister was here at the beginning on Monday, she was saying that she is looking at being able to change that whole permit official regime to one of risk management, so that you would work co-operatively with the risk management official first. You always have to have, at the end of the day, if someone really is creating a significant threat to drinking water and just doesn't care about their neighbours and about the water—but if you have nutrient management and an environmental farm plan, all of those things would be taken into consideration first. We've got some great feedback from agriculture that that's the right way to approach it and that's what we should do first. That's because we then have to amend the bill and that's why we're doing it.

The Vice-Chair: Thank you, Mr. Wilson. Thank you for your presentation.

Mr. Wilson: Do I get 20 seconds to respond to his last comment?

The Vice-Chair: I'm sorry, we have strict time here. We already gave you an extra minute.

Mr. Wilson: Okay.

Mr. Barrett: He asked a second question.

The Vice-Chair: When the session is finished, he can take him aside and talk to him. My apologies.

Mr. Wilson: That's fine. I appreciate the opportunity. Thank you very much.

GLENGARRY CATTLEMEN'S ASSOCIATION

The Vice-Chair: The second presentation will be from the Glengarry Cattlemen's Association.

Ms. Wendy Beswick: Good morning. On behalf of the Glengarry Cattlemen's Association I would like to thank the committee for inviting me to present our views on this very important topic. There are hundreds, if not

thousands, of cattle farms that will be impacted by your proposed legislation and that is why I am here. My name is Wendy Beswick and I'm a director with the Glengarry Cattlemen's Association.

First off, let me say unequivocally that the laudable goal of clean water will be shared by everyone. I challenge you to find any person who says that they are against clean water. With that said, I feel that it is critically important to separate the concept of clean water and the impacts of your proposed Clean Water Act, commonly referred to as Bill 43. It is really unfortunate that the government has called Bill 43 the Clean Water Act, as this just confuses the public on the stated goals and broad-ranging impacts. Whether or not the mere presence of criticism of the act could be perceived as anti-environment, it won't prevent us from letting you know that protecting and sustaining the environment is what we do, and Bill 43 falls short of that goal. Therefore, on behalf of Glengarry cattlemen, it is my goal here to illustrate how this bill may lead to an act that may have severe consequences in rural Ontario.

There is a better way. We believe that it's possible to meet source water protection goals without the legalistic or confrontational methods proposed in Bill 43. We believe that a permit official is not required, but source water protection goals could be achieved through an agricultural risk management official who would negotiate solutions and offer both technical and cost-share assistance.

Farmers respond well to education and encouragement and, if given scientific reasons as well as incentives, they would become willing partners without the need for regulations and enforcement measures. As proof, my husband and I are already willing partners with the Raisin Region Conservation Authority. We have submitted a proposal to them that we are working on with them. I have given you part of the proposal.

Our approach to agriculture is to create a viable mixed farm while maintaining a comfortable relationship with Mother Nature. This does not mean organic farming and it does not mean that there will be a forbidding and unrealistic approach to the use of chemicals or fertilizers. Some use of these may be required, but this use will only be with the best interests of the land at heart. What this approach really means is that there must be a human, agricultural and environmental relationship between the human factor and the land. Essentially, the landowner is steward of the land only for the life of the landowner. The land must be able to carry on to nurture not only the natural elements but future generations as well. Some believe that this is an unrealistic approach to agriculture, but to ignore either the economic viability or the environmental aspects of agriculture is to guarantee the loss of viable plant and animal habitat. You must have both working together harmoniously. If we can't make money doing what we do, you're going to lose the natural aspect because we can't look after the land if we can't make money doing it. We have voluntarily done this, but you can rest assured that the moment there is even the

perception that we may lose sovereignty of our land, we will stop co-operating. Trust must be maintained. Co-operation is optional.

Good governance finds ways to build on existing strengths. The proposed Bill 43, complete with permit officials and an entirely new bureaucracy, will undermine rather than strengthen existing stewardship programs and ethics.

Why is Bill 43 needed? The proposed Clean Water Act is confusing since it clearly contradicts Justice O'Connor's Walkerton inquiry recommendation 68, which states, "The provincial government should amend the Environmental Protection Act to implement the recommendations regarding source protection."

Justice O'Connor supported the concept of normal farm practice, as defined in the Farming and Food Production Protection Act. The proposed Bill 43 undermines and contradicts this. He said, "It is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns."

The McGuinty government has failed to follow Justice O'Connor's recommendations to consult with the farm community to develop appropriate source water protection planning, education and financial incentive tools. He recommended, "The MOE as the lead agency should work with OMAFRA, conservation authorities, and the agricultural community to develop an integrated approach to managing the potential impacts of agriculture on drinking water sources."

"This approach should include four separate elements: planning, education, financial incentives, and regulatory enforcement."

The recommended consultations have never taken place. When agriculture stakeholders met with Minister Broten to discuss the potential for provincial financial incentive programs and a source protection stewardship fund, we were told in no uncertain terms that there would be no provincial support for agricultural stewardship. We were told that if we wanted to discuss funding programs, we should contact the impacted municipalities. This is clearly unworkable, for, as you know, the municipalities are already overburdened and they cannot afford to do it.

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I have two specific recommendations.

Recommendation number 1: Please reconsider the heavy-handed and legalistic permit official approach. More rules, regulations and bureaucracy will not help to achieve source water protection goals. It may be good for the lawyers, but it will create confrontation and uncertainty in the rural community. Impacted landowners will fight this approach legally, technically and politically every step of the way. Rather, the focus should be on planning, education and financial incentives. Regulatory enforcement tools may be needed in some circumstances, but completely new legislation is not needed. In recommendation number 68, Justice O'Connor is clearly

and explicitly recommending amendments to the Environmental Protection Act to implement source water protection.

Your proposed Bill 43 says: orders and permits, permit officials, inspectors and enforcement officers, new municipal authority. What O'Connor was recommending and what the farm community wants is: co-operation, teamwork, a balanced approach, targeted technical and financial assistance.

Recommendation number 2: Full stop—and I repeat, full stop—to further implementation of Bill 43 until recommendation number 33 from the source protection advisory committee report of April 2003 is completed. The McGuinty government's own advisory committee recognized that one of the guiding principles for successful source water protection is cost-effectiveness and fairness. "The costs and impacts on individuals, land owners, businesses, industries and governments must be clear, fair and economically sustainable." That was on page 4 of your advisory committee report. The source protection advisory committee recognized that the issue of who pays must be dealt with upfront and in a clear and transparent manner.

Recommendation number 33 stated: "Consultation on implementation and ongoing planning, including how to pay for" source protection "be undertaken with different stakeholder groups immediately following receipt of this source protection planning framework. This consultation should start from the list of potential roles and responsibilities presented by the advisory committee."

Almost all of livestock agriculture's concerns are rooted in the failure of the McGuinty government to follow the cost-effectiveness and fairness principle.

It was a pleasure to speak to you this morning, and I hope that your consultations lead you to recognize the failures we have seen in Bill 43, as other stakeholders will undoubtedly be raising these as well. I hope the honourable members of the social policy committee take an honest look at the valid issues we are raising today. Thank you very much.

The Vice-Chair: Thank you, Ms. Beswick, for your presentation. Now we move to the question time. We'll start with Mr. Tabuns.

Mr. Tabuns: Ms. Beswick, thank you very much for that presentation. It was interesting, as you were talking—New York City and Portland, Oregon, are both engaged in buying land in their watersheds to protect their drinking water sources. So what you're putting forward is not at all an alien proposition, the idea that purchases should be made in order to protect water supply.

Could you tell us, if in fact there was an amendment to the act that explicitly stated there would be the inclusion of a stewardship fund covered by the province, would that significantly give comfort to the farming community?

Ms. Beswick: It would certainly appease a lot of farmers. I believe stewardship is a very vital leg and it's very necessary. You've got to understand that farmers are

the best stewards of the land. We love the land. That's why we're doing it. We understand that the land was there before us, it will be there after us, and if we want to protect the land for future generations—I'm a cattle farmer. Working with cows, I've noticed that I can get my cows to go where I want them to go with a bucket of grain in front of them and leading them a heck of a lot easier than I can with a cane trying to push them, because if I try and push them, they're going to go in a thousand different directions. If I really want them to go somewhere, if I want to give them a shot of something, I get out my bucket of grain and I lead them.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, Wendy. Actually, my very first job was on a cattle farm, so I know exactly what you mean.

So the stewardship fund, just taking on with what Mr. Tabuns was talking about; and the recommendation we've gotten very strongly from agriculture about the need to go from the permit official to risk management. So the first thing we're doing is making sure that we're working with the farmer co-operatively so that the farmer could say, "Before you take a look at this, look at all the stewardship I am doing."

Ms. Beswick: That's right.

Mr. Wilkinson: We all know that we always have a few neighbours, like in every situation, where maybe they're not good stewards, but the vast majority are. So if we change it from the permit official to risk management, would you think that also would go a long way to making sure that the approach was right? We all want clean water, so that would be the right approach?

Ms. Beswick: I believe so. Take, for example, the Ontario Farm Animal Council, I believe it's called—

Mr. Wilkinson: OFAC.

Ms. Beswick: OFAC. Farmers do not intentionally do something wrong. If we know that we're making a mistake, if somebody pulls us aside and says, "Hey, you may not realize, this is a better way"—OFAC is very efficient in that it eliminates a lot of bad publicity with the humane society. They're the mediator between farmers and the humane society. If the environmental people could do the same thing, be a mediator between MOE and the farmer so that things don't come to a head first, if you can mediate and negotiate with the landowner—because I don't believe it has to be a win-lose situation. It can be a win-win situation for everybody. That's the way it has got to be, I believe, personally. The farmer needs to be able to have a winning situation; as well, society has to have a winning situation.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much for your in-depth presentation. You've mentioned a lot of points that we've been hearing through the week and we agree with: There's no need for this legislation. It's going to create a bureaucratic red-tape confrontation, lawsuits. I want to ask you a couple of quick questions within it. Mr. Wilkinson has been going on that it's going to be a risk official instead of a permit official. I'm not sure how

that's going to change, but do you think that's going to help? If we don't make major changes to this bill, as in compensation with the stewardship fund, less confrontational approaches, are farms going to go out of business? Is this the last straw for rural Ontario, for our agriculture sector?

Ms. Beswick: I think the devil will be in the details. It's fine to change a term, like one official to another official, but unless we can see something in writing, exactly what's going to be done—you know, we are farmers, and politics is not our normal game. We realize that quite often politicians can change the wording to gloss things over, but then down the road the reality hits us. Again, I think the devil is in the details. We like to see things in writing, exactly what changes will be made.

Ms. Scott: Maybe as a point of order I could ask if we could get a definition from the minister. We went from a permit official to a risk management official—is that the correct term? Maybe we could get the definition of what this risk management official is going to be doing, as opposed to the permit official. Is it possible to get that so that we can maybe get that clarified?

The Vice-Chair: Okay. That's possible.

Ms. Scott: And maybe to have some more public hearings on the regulations.

The Vice-Chair: Ms. Scott, there's a question. Do you want it from the ministry or from the researcher?

Ms. Scott: Can the researcher get it from the ministry? Is that what you'd like as the procedure? That's fine.

The Vice-Chair: Okay; no problem.

Thank you, Ms. Beswick, for your presentation.

0940

CITY OF OTTAWA

The Vice-Chair: The next presentation will be by the city of Ottawa.

Mr. Dennis Jacobs: Good morning. It appears the technology is working, so I'll begin. My name is Dennis Jacobs and I'm the director of planning, environment and infrastructure policy at the city of Ottawa. With me today is Dixon Weir, who is our manager of drinking water services. We're very pleased to be here today. We think this is a very important piece of legislation. We've provided written comments to you previously, and we're here today to provide some summary comments for you and in our submission package some more detailed information.

Before beginning the presentation, I would like to highlight some things about Ottawa. We were amalgamated in 2001, and we're far from an urban municipality. There are 11 urban and rural municipalities that were brought together. We have a population of 870,000, 26 rural villages in a vast, general rural area. We have five distinct water supply systems. The urban area is served by two water treatment plants which draw water from the Ottawa River. Four of the city's villages have independent water supplies using groundwater systems. Approximately 80,000 of our residents obtain their water

from private wells, a subset of the city's population which is larger than many cities in Ontario. Villages such as Manotick and Greely are some of the largest villages in the province on private well and septic service. Eighteen of the city's villages are served by private wells. The land area of the city is over 2,700 square kilometres and has a very diverse and complicated range of soil, bedrock, surface and groundwater conditions. All of these complicate the application of this legislation, particularly the scale and identification of vulnerable areas.

One important point we wish to make to you today, and it's included in our detailed comments on the draft bill, is that parts of the city of Ottawa are in three different watersheds with separate conservation authorities, and we've been identified as participating in two source water protection areas. The city of Ottawa is very concerned regarding the eventual implementation as a result of this. We will be dealing with that in our presentation.

I would like to spend the rest of my time looking at five specific issues and providing examples, where I can, to show how we would suggest changes to the legislation.

With respect to source protection offices, we have the three authorities, two plans. This would result in two separate plans applying to our residents. The slide shows the watersheds and subwatersheds in the city of Ottawa. The Mississippi watershed is to the left, or the west area of the city, and the Rideau River watershed is through the middle. These two groups have formed one source protection region. The South Nation River is to the right, or the east of the city, and South Nation Conservation and the Raisin Region Conservation Authority are another source protection area.

Today we are working closely and successfully with the two separate source protection offices, and we fully support the work that the conservation authorities are trying to do with respect to the implementation of this. We find, however, that the present sections of the act don't provide direction or support for being divided into two separate areas. When it is the responsibility of the municipality to implement many portions of it, we need to ensure that we have a consistent set of implementation policies and directions that result from these plans.

We do not want the city of Ottawa residents to have to deal with different rules or standards or processes, depending on which source protection area they live in. We reiterate previous comments by the city of Ottawa and others made throughout the province with respect to the Walkerton report that there needs to be complete clarity on government structures and roles and responsibilities of the province, source protection authorities and the municipal level of government.

We have recommended that section 7 of the act be supplemented by a section which states the requirement for adjacent source water protection regions to coordinate their works where the regions share a common municipality. This will ensure that terms of reference, assess-

ment reports and plans have some consistency as they're implemented inside a municipality.

The Ottawa River is another issue, and in some ways is similar to a situation with respect to the Great Lakes. It's a geographic factor that the watershed involves more than one jurisdiction, not only at the municipal but also at the provincial level, and involves many conservation authorities and many areas where no conservation authority exists. In many cases, the land area that conservation authorities are responsible for is much smaller along the Ottawa River than along their principal conservation area, so it's very much an ant trying to deal with an elephant. We find that the act is silent on how these aspects of the Ottawa River source protection planning in Ontario can be addressed.

We do know from our work with the South Nation region that the province has provided responses to requests for information and direction on this matter, but to date they've been on a project-by-project basis. At some point in the near future there will need to be a coordinated consideration of this issue in order to direct water budget determination, threat identification and source water planning.

Our next issue relates to the provisions of the act for private wells. The city of Ottawa has a large rural area, including 18 villages relying on private wells. Section 8 of the bill allows municipal councils to name other areas to be considered in the assessment report. We are not clear that the province will fund the subsequent work requirements.

This slide locates the villages in the city of Ottawa and their varying sizes. Because of the variability of groundwater across the city, each is unique in their characteristics of groundwater. Therefore, any protection planning that the city might undertake must be tailored to those villages. The stated purpose of the bill is to protect existing sources of drinking water, yet the lack of provisions in the act directing the source protection plan to include private drinking water systems, in particular, concentrations of private systems in villages, represents in our opinion a contradiction to the purpose of the bill.

We understand that others across the province have made similar comments. We have recommended that subsection 8(3) of the bill, the section allowing municipalities to name areas, be expanded to include any area that the municipality considers would benefit from source protection. Such flexibility would be of great benefit to municipalities such as Ottawa in ensuring that we can include, where necessary, village plans in our source protection plan.

Another issue is the pace and complexity of the legislation that has resulted since the Walkerton inquiry. The city of Ottawa has had some difficulty completing its tasks and participating in provincially funded efforts as we find that funding and work plans are being set before technical guidance documents have been completed. When this same approach was followed in responding to a requirement for engineers' reports in 2002-03 and wellhead protection studies in 2003, this resulted in

misdirected effort and confusion. In moving the responsibility for this important work down to municipalities, it's incumbent upon the province to establish a work plan that follows a logical path to avoid causing municipalities and service providers to misspend funds in misdirected or inconsistent efforts.

In view of the time, I'll move on to my last point: the issue with respect to funding. We would like to emphasize our and others' view regarding the funding of source water protection. I would comment on the last speaker's note about providing the grain to lead the cattle: I think that was a very apropos aspect. If you're going to have new legislation and you wish your municipality to implement it, you need to provide the funding to support it and at least provide the direction.

In closing, we thank you for the opportunity. The city of Ottawa supports the bill and we wish to work with our partners in the conservation authorities and the province to ensure that we can meet the objectives of this legislation.

0950

The Vice-Chair: Thank you very much for your presentation. We'll start with Mr. Wilkinson.

Mr. Wilkinson: Thank you so much to the city of Ottawa for coming in to join us today. You're really in a unique position, as you were mentioning. We've had some similar comments in the sense of the protection of the Great Lakes because it's interjurisdictional, because we have all of the other provinces and states, particularly, that are in that watershed. You're saying you're in a watershed on both sides of the great Ottawa River, so we're dealing with the province of Quebec. Specifically, on our side of the border you're actually dealing with three conservation authorities and two source water plans. So what you really need is the province to make sure that we've got that coordination so that you don't have differing sets of terms of reference and that type of stuff. All of this in the bill—terms of reference, assessment report, source water plans—is ultimately approved by the Ministry of the Environment; the work is done locally and then it gets sent up. Am I right, then, that what you need us to do is to make sure that that is taken into consideration by the ministry, so that when you have a place like Ottawa, which is straddling all of these different lines, there's that consistency there? Have I got it right?

Mr. Jacobs: Yes. That's correct. Certainly with respect to the source protection plans themselves, that consistency can be done through the approval and the monitoring of that process and those plans.

With respect to the issues of interprovincial coordination, I think that's something that really needs to be handled directly by the province, and the legislation needs to speak to how that will be undertaken. The Ottawa River is certainly a significant tributary, and a lot of the impacts on that river are totally outside the control of not only municipalities but also the province of Ontario, so we need to be working together with our colleagues across the river.

The Vice-Chair: Ms. Scott?

Ms. Scott: Thank you very much for your presentation today. We've heard a lot from municipalities, that they need more involvement. They know their areas better; they want more input with the bill.

You've obviously been doing work in your municipality. I just wondered if you had any rough idea of what costs, as the bill stands now, you might incur, or an example of what you've already done and how much money that has involved, and what you think the provincial government's responsibility is with respect to costs. You don't have to have an exact figure.

Mr. Dixon Weir: I don't think we have a collective number. Certainly, this act and all of the others that have been streaming down from the province over the last three or four years have taken up a decided amount of funds and focus in order for a municipality even the size of Ottawa to try to respond. So if one speaks of legislative fatigue, perhaps that's part of what all of these utilities and municipalities in this particular field of work are facing.

Ms. Scott: So unless there's some provincial—

The Vice-Chair: Thank you, Ms. Scott. Mr. Tabuns?

Mr. Tabuns: Thanks very much for the presentation. If provincial funding was not made available to Ottawa to implement this new act, how would the city of Ottawa cope?

Mr. Jacobs: I think in many respects that would be a question that would be better put to our mayor and council, but as far as staff, we certainly do not see the resources to implement this legislation currently being available to us. Just in responding to the legislation, we're having to apply resources that would normally be doing other work to prepare and comment on these things; to participate, in our case, in two source protection planning areas; to have staff going to multiple areas and in some cases travelling considerable distances. So I don't think we would be in a position to implement the legislation without some form of increase in either property tax or, if it's allowed, water-rate-based types of sources. So our taxpayer would be very concerned about that.

Mr. Weir: If I could just add to that, the other point we were unable to touch on in the presentation is that there is a companion bill, the Sustainable Water and Sewage System Act, that seems to have stalled out at this point. It's interesting that you speak to the funding. That act was very much about funding. We're in this gap, if you will, between the two fundings, and we're very interested in hearing from the province their response to the Watertight report that came out regarding the case for changing the water and sewage systems act.

On the one hand, we're seeing criteria coming up, but on the other hand, we're not hearing too much about what the province's take is on what could be a very fundamental change in organizational design and service delivery across the province for utilities. So the two pieces of very complex legislation need to be brought forward so that municipalities can deal with both sides, both the service delivery and the rate recovery.

The Vice-Chair: Thank you, Mr. Tabuns.

Mr. Tabuns: Can I ask a question of you, Mr. Chair? If the researcher could bring us material on the Manitoba water stewardship fund so that we'd have that on hand to see what model they have. Thank you very much.

The Vice-Chair: Thank you, Mr. Jacobs, for your presentation. Thank you, Mr. Weir, for answering questions, and Mr. Tabuns for the questions.

DUNDAS COUNTY FEDERATION OF AGRICULTURE

The Vice-Chair: Now we move to the next presentation, by the Dundas County Federation of Agriculture. You can start whenever you're ready.

Mr. Gordon Garlough: Thank you very much. With me is Jackie Pemberton, who is president of the Dundas County Federation of Agriculture. I'm a member of that federation and have been involved at both the local and provincial level with water and other environment issues over probably 15 years, something like that. Both of us are from dairy farms. In my case, I'm a retired dairy farmer but still farming.

Our brief is very short. I hope it's to the point. Page 1 simply indicates some perspectives that I think the present Bill 43 is taking the wrong direction or the wrong view of things on. The second page asks for specific changes, and I will go over those one at a time. The last two pages are a funding example for land use restrictions that the bill may impose or that may be imposed through the bill. I think we should look at that model that's already out there rather than trying to reinvent the wheel.

If I could inject one answer to a question that was raised in Mr. Wilson's presentation about the Manitoba fund, I can't tell you the exact details, but it's set up in the form of a trust fund, where with the passing of the legislation the government put a lump sum in the kitty of that trust fund with a commitment to add to it on an annual basis. From that fund, then, amounts would be drawn for the on-farm or the community end of the funding.

Page 1: Farmers in Dundas county are following the Clean Water Act with interest, respect and with a great deal of concern. In its present form, Bill 43 sees farmers as an enemy of water protection issues, especially in the permits, inspection and enforcement sections. As a result, the bill fails to recognize the real, positive role that farmlands and farm people have in water resource conservation. There are many facets to this wrong attitude, but please note the three key issues below.

First, a healthy, biologically active soil is conducive to good crop production. As well, a healthy, biologically active soil is also a positive factor in water resource conservation. In other words, farmers are working towards water conservation when they try to maintain and improve the health of their soil. Farmers and farming and municipal wells, groundwater, can get along on the same piece of land, can be a part of the same land use and the same land use objectives. I think you'll hear more about

that from the North Dundas delegation that will be speaking to you, but I might point out that within North Dundas we have a municipal well in a very susceptible aquifer, a surface aquifer. Because it was a susceptible aquifer, that municipality, which originally was the town of Winchester, set up a monitoring program for the water conditions around that well. They now have 10 years of records for that monitoring program, and in spite of intensive agriculture going on around the wellhead there are zero indications of any decline or any concern in water quality.

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So, first point: Farmers are to be considered as partners, not the enemy, when it comes to water issues.

Second, recognize that farm production dictates through economics that crop production inputs like plant nutrients be used carefully. Overuse is bad environmentally but it's also senseless economically. When farmers precisely measure the amount of nutrients—manure, fertilizer and so on—plus the natural nutrient content of the soil through soil tests, they are working toward optimum economic crop production and by those same measures they're working to minimize an already low environmental risk, as far as water is concerned.

Third, Bill 43 currently does not mention compensation. There are already established practices in other aspects of the relationship between public good versus farmer/landowner rights with regard to land use that pay farmland owners for land use restrictions that are imposed for public benefit. Compensation to owners for land use restrictions deemed to be in the public interest is only fair play in a democratic society. I'll refer you to my own personal suggestions for that public versus private landowner rights model on pages 3 and 4 that are in the total presentation.

Page 2, DFA requests the following changes to Bill 43: First of all, compensation for land use restrictions, and see the model that follows. Second, the sections of Bill 43 that deal with permits, inspection and enforcement should be completely removed from the bill. I could add that personally I find them on the border of being offensive as it stands. What should be added to the bill somewhere is something about water use efficiency and water conservation for municipal systems. That should be in the objectives.

Fourth, with relation to a source protection board, "source protection committee," "source protection plan" and interim period, there are two points to be made there: At present, the source protection committee would draw up the source protection plan and then apparently dissolve, leaving the source protection board responsible for oversight and amendment and so on. Secondly, at present, the interim period provisions of the current Bill 43 would provide some sort of enforcement measure before the source protection plan is approved and comes into effect. In essence, there are provisions to enforce the act before the act comes into effect. Two recommendations coming out of that: The source protection committee should be established as the lead authority for

the terms of reference, the assessment report and the source protection plan, and the source protection committee should remain in place for implementation, oversight and consideration of amendments. Secondly, the interim period provisions should simply be removed. There's already scope in the Environmental Protection Act and other legislation to deal with any cases that come up there.

Fifth, a more realistic appeals process needs to be provided for landowners to have the right to challenge information about their property in the source protection plan or assessment report.

Sixth, the act—indeed, the whole philosophy of source water protection—must recognize the fact that surface water source and groundwater source and municipal systems need to be regulated under different rules, even though the final standards for the water need to be the same or similar.

Lastly, place the responsibility for drawing up the protection zones around the wellhead and the landowner compensation agreements in one and the same body, not in two separate bodies. The source protection board, the source protection committee, the well owner: I've put those in with question marks. The two things need to be in one set of hands.

The Vice-Chair: Thank you, sir, for your presentation. I'm going to move on for questions. We'll start with Ms. Scott.

Ms. Scott: Thank you very much for your presentation. You've brought in a lot of good points, and certainly we've heard about the interim period and the lack of notification to landowners, to agriculture owners—that they won't be notified if they're designated a significant risk. Could you elaborate a little bit on that? Would you like it to be the MOE, which I think holds the power now to go in? Would you like to elaborate on what kind of appeal process you'd like to see and the notification that your land is being assessed and what it's being assessed at?

Mr. Garlough: Simply, anything that would give the landowner the right to disagree and present the evidence why he or she disagrees about what is stated in that report.

Ms. Scott: And what body would you like it presented to? I know you have agriculture tribunals now, environmental farm tribunals; just some sort of democratic appeal process.

Mr. Garlough: I suppose the committee you have now for what are called nuisance farm complaints—odours, that sort of thing—the Normal Farm Practices Protection Board: Something like that would work, sure. But if the landowner really feels that information in the report is wrong, he or she needs to have access to a process to correct that or try to correct it.

Ms. Scott: I agree.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you for coming in today and making a presentation. On the back of the documents you

gave us, you refer to the rights-of-way mechanisms in Canada for energy corridors being a useful model for us.

Mr. Garlough: Yes.

Mr. Tabuns: Could you just speak about that briefly? But before you do, Mr. Chair, again, through you to the researcher, could we have a report on this? If there's a working model here that seems to have buy-in on a rural basis, I'd like to know a bit more about it. But, sir, having asked for that, if I could ask for your comments.

Mr. Garlough: Yes. This is something I've been involved with, I guess, since I was a kid in high school. At that time, the first gas pipeline passed through our farm; two more have passed since. Dundas county is located where the main gas line from the west meets the east-west transmission corridor. Also, the export line to the US is in our county.

That model is very simply one where the pipeline company has an easement on the land, and if and when they come in to do any work, the farmer is paid for the crops he loses, the damage they do and so on. That system has evolved. It wasn't there in 1957, but it's there now, and that system has evolved to the point that when a major line went through Dundas county probably 10 years ago, farmers showed very minimal concern because they had the experience of the landowners around them and previous lines and knew that at least they would be reasonably dealt with.

Mr. Tabuns: Thank you very much.

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The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Good morning, Gordon. Thanks so much for coming in on behalf of the association and being a leader. I'm glad that Mr. Tabuns asked that, and we look forward to that from research.

We had another report from research that we just got this morning. There seemed to be this kind of canard out there that there is expropriation without compensation, because there are two sections of the act that deal with that. We've got a report here that clearly says that there's nothing—that that is not the case; it's the way the bill is drafted. So you would agree that it's important, from a compensation point of view, that that is something that needs to be in the bill and needs to be clear?

Mr. Garlough: It needs to be clear that if a landowner's land use is restricted to the point where it economically affects the use of his land, the public should pay for all or most of that restriction.

I'm not concerned about expropriation of land around a well. If a municipality wants to buy up land around a well or the well owner wants to buy up land around the well to protect it, that's fine; they make an agreement with the landowner. The same thing happens with the energy corridors. When the owner of that energy corridor comes in, they negotiate with the property owner the payments that they will make for the work they're going to do.

The Vice-Chair: Thank you very much, sir, for your presentation.

CORNWALL AND DISTRICT ENVIRONMENT COMMITTEE

The Vice-Chair: The next presentation will be the Cornwall and District Environment Committee.

I think you are Elaine Kennedy. You can start whenever you are ready.

Ms. Elaine Kennedy: Mr. Chair, members of the committee, staff, participants in this hearing, my name is Elaine Kennedy. I am a resident of the township of South Stormont. I have been involved in many environmental committees in the area for a number of years. I was chair of the Public Advisory Committee of the St. Lawrence Remedial Action Plan. I was a member of the Public Interest Advisory Group of the Lake Ontario-St. Lawrence River Water Levels Study. I am presently a member of the Working Group on RAPs and LaMPs for the Review of the Great Lakes Water Quality Agreement, as well as eight other local environmental groups.

I have enunciated some of the committees I have been on to indicate that I know quite a bit about public advisory groups, the key word being "public." Thus I have concerns about the source protection committee.

In studying the appropriate sections of Bill 43 relating to the source protection committee, I noticed that the members of the committee "shall be appointed in accordance with the regulations." Then when I tried to find the regulations, I just got the EBR Registry outline of the regulations, which said that the source protection committees may include one third municipal representatives, one member from the general public, one member from First Nations, and representatives from agriculture, industry, public health bodies, non-governmental organizations and others.

Since then, I have received information that is slightly different.

Since there can't be more than 15 members, not counting the chairperson, I looked at how that 15 could be chosen in our area: one third municipal representatives—in other words, five, which would not allow a representative from each township and the city of Cornwall; one member from the general public; one or two from First Nations; one or two public health bodies, such as the Eastern Ontario Health Unit; one or two from the agricultural sector; and then, from some information, there should be industry and NGOs represented.

I think it would be difficult to decide upon which of the agricultural associations will be represented. And will there be a representative who is not a member of an association?

I believe that, depending upon the area that the source protection committee and the source protection authority serve, there must be more leeway on the number of members of the source protection committee.

In listening to the Ottawa presentation, I was very concerned about their large area, and it brought to mind even more my concern about the size of the source protection committee. How could they represent that huge area that is involved in the city of Ottawa, both urban and rural, and still have representation?

I recommend that there should be up to 19 members on the committee, plus the chairperson. This would allow several things. The one third—perhaps seven—from the municipalities could mean that the townships and the city of Cornwall could be represented. There could be more representation from the agriculture associations in an area that is highly agricultural. In some areas where there are many rural landowners who are not farmers, there should be space for two such persons, one representing those who own less than five acres and one for those who own more. I suggest these categories rather than that of "general public," though I do admit that it leaves out people who rent.

Thus, for our area, the results would be—and by the way, I apologize for the changes in the numbers. I refused to print them over again when I found my mistake. Being a retired math teacher, it's even more embarrassing that I made a mistake in the numbers, but as an environmentalist, I can't possibly print it again and waste that much paper, so I just fixed the numbers, and I do apologize.

The results would be:

- seven representatives of municipalities, one from each township and one from the city of Cornwall;
- two rural landowners, non-farmers;
- two members of the First Nations;
- one from industry;
- two from public health bodies such as the Eastern Ontario Health Unit and our community hospital;
- NGOs; and
- agriculture associations and agriculture representatives, both from the associations and not representing an association.

The Clean Water Act must be implemented with the understanding and support of local citizens. This can only be done if citizens think that their issues are being addressed. Everyone wants clean, safe and plentiful drinking water. This can be achieved if citizens believe that the process is transparent, fair and understandable. It is in your power to make it so. If you don't, there may be problems to solve other than clean, safe and plentiful drinking water. Thank you for your attention to this issue. I'm pleased to answer questions.

The Vice-Chair: Thank you for your presentation. Now we can start with the questions. We'll start with Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming in and making the presentation. Actually, I have to say you were pretty clear. I think I understand the point, so I don't have a question for you.

The Vice-Chair: Thank you, Mr. Tabuns. That was easy. Mr. Wilkinson has a lot of questions.

Mr. Wilkinson: Thanks for coming in, Elaine. Actually, you go to the nub of the question of all legislation, right, because you set legislation as a framework and then you have to have regulations so that it can be a living, breathing document so that if there's a problem, you don't have to run the whole bill back into the Legislature.

What we're trying to do is make sure that we have a large enough source water planning committee so that it really represents the whole interests of all the people who are drawing the common water. The proposal is 15 people in the bill, because some people said, "Oh, well, the minister could say it was only three people and that wouldn't be consultative," and other people said, "You could have 100 people." So we've been posting this on the Environmental Bill of Rights registry.

You've made a compelling case about how we might want to have even a bit more leeway to make sure that in every source water committee, it really represents the best interests of the people—make sure that all the stakeholders who need to be there are there so that the public then buys in and feels that it's represented.

Some of the suggestions we've had, just to get some comment: The public health people came to see us. They see that perhaps their role is, instead of taking one of those seats, that they should be ex officio, because you've got public health units and they could have a number of different source water planning committees. I've got five watersheds in my riding of Perth-Middlesex. So instead of having somebody there in all five, they should have the right to be there to bring the perspective of public health.

I know another suggestion we got—I have a lot of townships myself—was that what we should say is, "No. It's got to be upper tier." So in other words, you don't have to have every municipality there, but you have to have the upper tier there, whose function is to represent all of the people, for example, in a county. Could you give us some comment about that? What you're saying is that we need to have more flexibility, but in another part maybe we don't need 19; maybe we only need 15. It's how to have one size fits all and actually make this thing a living, breathing document.

Ms. Kennedy: When I first started looking at this situation and the source protection committee, one of the things I noticed, for instance, was that there were no scientists involved. Being on the board of directors at the St. Lawrence River Institute of Environmental Sciences, I thought, hey, wait a minute; we haven't got any science here. Then, as I looked into this more, I realized that there were the other technical groups that were involved and I thought, okay, that's where the River Institute needs to be involved, at that level, to bring in the scientists who are studying water issues. That, I think, personally, is where the Eastern Ontario Health Unit also belongs.

From my point of view, I wouldn't cut the size of the group, because those people feel that they belong more on the technical side. I think that's where you can again bring in more of the general public, because it is the public and the people who can talk to their network, who can get out the information and make sure that it is understandable, fair and transparent. That's the big thing. That's one of the things that I've come to realize more and more in my involvement in groups, that you've got to be transparent so that people know what you're doing, why you're doing it—that's even more important; why

you're doing it—and that can only be done if you've got lots of people on this committee who can talk to their networks. It's not just what goes out in the media or on the Internet; it's what goes out in the networks of people who talk to their own people and make them understand what is going on and why it's happening.

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Mr. Wilkinson: And at Tim Hortons.

The Vice-Chair: Ms. Scott?

Ms. Scott: Thank you very much for appearing here before us today. You made a lot of good points. We have heard some concern about who is on the committee.

First of all, the committee hearings aren't going to southwestern Ontario or northern Ontario, so we have concerns about public input from those areas that we're not going to get covered. Also, I'm sure many in the room remember nutrient management and the many public hearings that were held with that when the regulations came out. You mentioned regulations. What would you like to see when the regulations come out? When we did nutrient management before—Mr. Barrett was there—they did 18 public consultations and hearings and made changes in the regulations, but basically it was more of an open, public democratic process. How do you feel about public hearings on the regulations specifically, which, indirectly, we'll address in committee?

Ms. Kennedy: I think that's very important because, as was pointed out, it's the regulations which are the meat, which get down to the nitty-gritty and explain exactly what's going to happen, who the participants are, what the rules are going to be etc. In listening to the various people this morning, it is their concern about what's going to be in the regulations that is even more important than the general broad idea, because we all agree we want clean, safe drinking water. It is the nitty-gritty of what happens to the people, the methods that are going to be used, whether it's compensation or how it's tested etc. It is those details, which are in the regulations, that should go out to the people and let us talk about the regulations, particularly when we can see more detail.

Ms. Scott: Absolutely. So maybe the government would commit to a lot of public hearings on the regulations that come forward.

The Vice-Chair: Thank you very much, Ms. Kennedy, for your presentation.

RAISIN REGION CONSERVATION AUTHORITY SOUTH NATION CONSERVATION

The Vice-Chair: Now we move to the next presentation, from the Raisin Region Conservation Authority. You can start whenever you're ready.

Mr. John Meek: Thank you.

The Vice-Chair: I just want to remind everyone that you have 10 minutes for speaking time and five minutes for questions. If possible, please stick with the timing.

Mr. Meek: I'll do my best.

Good morning, committee members. On behalf of the Raisin Region Conservation Authority and South Nation Conservation, welcome to Cornwall. My name is John Meek. I work at the Raisin Region as the regional project manager for the source water protection initiative, which is a partnership between South Nation and the Raisin Region.

As you've heard already this morning, our watersheds are largely rural and agricultural in nature. Our source water protection region, as defined in the draft legislation, is approximately 7,000 square kilometres, consisting of 21 upper- and lower-tier municipalities. We have a few large urban centres—the city of Cornwall and a portion of the city of Ottawa—but many smaller urban centres scattered throughout the countryside. We border the St. Lawrence River, obviously, and the Ottawa River, the province of Quebec, the United States and the Mohawks of Akwesasne on Cornwall Island. So we have multiple jurisdictional issues in our region. We have several population growth centres surrounding Ottawa and along the major corridors: 401-St. Lawrence River and 417-Ottawa River area.

Our drinking water sources in this region come from a variety of different places. Of course, the big river systems supply a good-sized population with drinking water, those being the Ottawa and the St. Lawrence. We have many inland communities relying on municipal groundwater supplies. We have one small community relying on a surface water supply, but the majority of our population gets their drinking water from privately owned and operated wells.

The Raisin Region and South Nation support the Clean Water Act and the principles of watershed management. While the Clean Water Act and source water protection are new terms, they're not new concepts. In fact, our conservation authorities have been working to protect source water for decades.

I'm here today to express four main concerns our conservation authorities have with the draft legislation as it stands. The first one relates to funding for implementation of the source protection plans. Since the release of the draft legislation, our board members have indicated strongly that funding the development of plans is only part of the commitment required by the province to achieve the protection of water resources. They've clearly stated that the province needs to fund the implementation of the source protection plans. For example, the Clean Water Act gives responsibilities for monitoring and annual reporting to source protection areas without any suggestion of how these services would be delivered. Long-term sustainable funding would ensure that these provisions are met and that source protection plans are implemented. An example of how successful plan implementation can occur in this scenario is the remedial action plan for the Cornwall area of concern, where the implementation of remedial actions is funded by both the provincial and federal governments. This funding is used for voluntary and incentive-based programs, monitoring, research and reporting. Our conservation authorities

agree with the concept of a provincial stewardship fund for implementing the non-regulatory programs.

The second point I'd like to bring up relates to roles and responsibilities. We've heard a bit about this already. The Clean Water Act, in our opinion, requires more clarity on the roles of the source protection committee in terms of its duties and responsibilities. What is the lifespan of this committee? Does it have a role beyond the terms of reference, the assessment reports and the source protection plans? Will the source protection committee approve or review future amendments to the plans or be involved in implementation at all? Our conservation authorities feel that the source protection committee should carry out consultations on the terms of reference, assessment reports and the plans themselves and that the members should be residents or property owners within the source protection region. In our particular region, we have a local example in place called the Eastern Ontario Water Resources Committee, which is an implementation committee that was set up following a regional water resources study in 2001. This framework is successful and it continues today.

The third point relates to non-regulatory approaches for water resources protection, the carrot versus the stick approach. The Clean Water Act obviously focuses on regulatory measures for water resources protection. Unfortunately, this has been perceived by many as the new way of doing business for protecting water in Ontario. Our conservation authorities support the inclusion of non-regulatory tools right in the Clean Water Act. For decades, the Raisin Region and South Nation have employed education and incentive-based watershed stewardship services as effective means of working with our community groups, agricultural members and private landowners to protect the quality of our local water resources. Our experiences have shown that regulatory enforcement is not well suited to all situations. It's recommended that regulations be seen as an option when compliance is critical or other negotiated options have proved unsuccessful. Previous water resource studies in our region were voluntarily undertaken by our municipalities. No one told us we had to do them. They were led by multi-stakeholder committees. Likewise, the South Nation Clean Water Committee and the Raisin Region's St. Lawrence River Restoration Council currently work with local stakeholders on incentive-based water quality projects. These committees have been in existence for over a decade. One quick example of a success story or some of the on-the-ground implementation relates to manure storage upgrades. Since 1994, between our two conservation authorities and participating farmers, over 158 manure storage upgrades have been completed in our watersheds. These projects are on a voluntary, cost-share basis and they help protect our water.

The last point I'll make is with respect to non-municipal drinking water sources. As I mentioned earlier, a significant proportion, if not the majority, of our population relies on private wells for their drinking water. In many cases, small hamlets have clusters of

private wells within close proximity to one another. There are literally dozens and dozens of these small hamlets in our region. As mentioned by the city of Ottawa, we feel the Clean Water Act needs to provide more clarity on how these non-municipal supplies can be included in the development of source protection plans. We would suggest that the emphasis needs to be placed on non-regulatory measures for these communities in terms of education and best management activities to enhance and protect the drinking water supplies for all of our population, not just the people who are on the municipal systems.

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In summary, our main concerns relate to:

- the sustainable long-term funding for implementation of the source protection plans;

- clarity on roles and responsibilities around the source protection committee;

- the need to look at regulatory measures as only one possible tool available for watershed stewardship; and

- clarity on the non-municipal systems within the act.

I'd just like to thank the committee for your time today. We look forward to our role in the development of the source protection plans.

The Vice-Chair: Thank you very much for your presentation. Now we'll start the questions with Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, John. Just pass along thanks to your colleagues at the conservation authority for the work that you're doing on this. It's very leading-edge. We know that sometimes you're at the bleeding edge as we try to sort all of this out, but we appreciate the work—and all of the money that we've put in over this five-year period to get the science done, because I'm sure it makes you feel a lot better that we are trying to base this on science and making sure that we have that.

Going back to the question of the non-municipal private wells, we've had some other testimony, so I just want to get your feeling on it. The municipality may decide to have a hamlet, for example, on private wells designated. We've had some testimony that actually the minister should also have the ability to have a say in that. Some people were talking about nursing homes, schools—places like that—where you have vulnerable populations. You would want to have that ability. I take your point about making sure that we use the non-regulatory tools there so that we can get that work done. But can you give me sense about whether you think that the minister should also have that power, not just the municipalities, so you'd have a double check there to make sure we're not missing people who really should have the benefit of making sure that their water is safe?

Mr. Meek: I think through the process of trying to identify what the risks are, the Clean Water Act should allow these non-municipal areas to be studied in the same respects as the municipal areas, so that we have a better understanding: Are there risks, and if so, what are they? I haven't thought much about the concept of the minister

approving it, but in my mind it would seem that once the source protection committee has an understanding of those risks, just like the municipal risks, then the plan developed through the committee would formulate recommendations on how to—

Mr. Wilkinson: Or if they really felt there was a significant drinking water threat; in other words, in some places it's not been a problem, but here, through science and through the work, we've found that there might be a hamlet that really should be part of that, because of the nature of it, I suppose. The act now just says that the municipality "may" designate; it doesn't say that they "must." So what's the criterion that would make that happen? Should we be clearer on that?

Mr. Meek: Yes, I think so, because the conversations we've had with our boards of directors who are municipal politicians suggest that that's going to be a difficult decision for municipalities, and it probably will relate back to the funding issue, because we have so many non-municipal clusters, as you would say.

Mr. Wilkinson: Great. Thanks, John.

The Vice-Chair: Thank you, Mr. Wilkinson.

Mr. Barrett?

Mr. Barrett: Thank you to the conservation authority for testifying. You raised the issue of funding, and we know that this particular piece of proposed legislation is silent as far as funding. We understand that if this legislation goes forward, it will cost billions and billions of dollars. The province of Manitoba has a water protection act. Right in that legislation they've mapped out the establishment of a water stewardship fund, a trust fund, so this question is very clearly identified in the legislation itself. We get this question during these hearings about who's going to pay for this.

My question to you is: You know the municipalities in your area and the farmers and people who own property. In this part of eastern Ontario, can they afford to pay extra money at this point for a new piece of legislation like this, given the estimate of cost, let alone the estimate of costs if we ever got into private water wells, for example—there are about three million of them in Ontario.

Mr. Meek: Can they afford it without provincial funding, is the question?

Mr. Barrett: Yes. That's part of it.

Mr. Meek: Everyone I've talked to, including our boards of directors, say no. We are not a big population out here in eastern Ontario. So even when you look at water services and sewer services, a hamlet of 700 with a multi-million-dollar project to give them good sewage treatment and good water is unaffordable. We don't have the population base.

Mr. Barrett: I think that cities like Toronto or Ottawa have the population base; they don't necessarily have some of the concerns. Toronto just takes it out of Lake Ontario. They're not necessarily concerned with source protection. To what extent should this burden be shared with a city like Toronto that isn't dealing with a lot of

these agricultural and farm-based issues as far as source protection?

Mr. Meek: The commonly used expression from conservation authorities is, "Everyone lives downstream." So I would suggest that if Thunder Bay, at the top of the Great Lakes system, was improperly managing their land use activities, that could ultimately result in impairments to the Toronto water supply. So I think the message is, we're all downstream. It's a provincial-global program. The message from our board is that certainly the province should be funding the implementation of the plans as such.

The Vice-Chair: Mr. Tabuns?

Mr. Tabuns: Thank you very much for the presentation. My colleague, I think, has asked the substantive question that I was interested in. If this act was passed and funds were not provided, could you actually do the implementation that you're expected to do?

Mr. Meek: I guess, until we have gone through the process to identify what the risks on the landscape are, it's hard to predict what the cost will be, and I'm sure that's one of the provincial challenges. We have been working and will continue to work in the manner that we have with our local stakeholders on incentive-based and education-based programs, whether the Clean Water Act exists or not.

The Vice-Chair: Thank you, sir, for your presentation.

STORMONT DUNDAS LANDOWNERS' ASSOCIATION

The Vice-Chair: The next presentation will be by the Stormont Dundas Landowners' Association.

Sir, you can start when you're ready. As we've mentioned, you have 10 minutes' speaking time and five minutes for questions.

Mr. Denis St. Pierre: Okay. We're going to make it as fast as we can. We've got lots to cover.

First, my name is Denis St. Pierre from the landowners from SD&G. I was involved in water issues for 20 years, particularly in the Winchester area, where they tried to expropriate my farm for water. I know all about the water act. I've travelled across the province. My library has been used by masters degree students, including John Meek, who just spoke before. I have a copy of his masters degree with me. I've also come back from Europe. So we're going to give you a little bit of a different slant, and we're going to cover this fairly fast.

The purpose of the presentation is to prove to you, the panel, that we do not agree or intend to comply with the source water protection act as it's set out. It deals with some major components which we're going to address today that have not been addressed, and that is: (1) water rights; (2) property rights; (3) controlled agriculture; (4) no power or control at the municipal level to designate their own—basically it's MOE; (5) it has already been decided in a lot of cases; and (6) no funding.

I want to start off today with the first document. This started off as Canada's green plan, the Charter on Groundwater Management. I have a copy with me. It's a little blue book. I worked for four years in the federal ministry of the environment. Under the green plan, the charter lays out in the federal government—that's why you have the Manitoba act and you have the same act in every province. I want to cover on page 3—and I've highlighted those as part of the legislation:

1040

"New legislation should strive towards changing ownership of rights" on water; a "government-controlled permit system" should be established. I came back from Europe; a farmer has to get a permit to drill a well and farmers there—now, a municipal well, one particular farmer, it was costing \$40 a day to get water. "Abolition of user rights" to be changed.

I go on to page 13 of the charter. This is under "Land Use Policies." "Land use planning already at an early stage of development processes" is being changed. In Ontario, one of the things you had to do, you had to change the Planning Act. This Clean Water Act is coinciding with the Planning Act. All our official plans are now being changed to coincide with it.

A little bit further down, "changes in land use patterns and related rights." If it's put in with the Planning Act, it takes all the rights away. They can say it's cheaper to protect. It's also cheaper to regulate and not have to pay the landowners.

On page 14, it talked about protection zones in wellhead areas. So really, Walkerton had nothing to do with the issue. That just put extra gas on the fire, and environmentalists like that. On page 14, protection zones: Restrict and prohibit land use activities, mining, intensified farming, application of fertilizer and pesticides in those areas. Nothing in this charter says anything about compensation.

Page 15: We must control the use of manure and fertilizer on farms. The technical term in the academic university, they call it controlled agriculture, and we will talk to you shortly about that.

That's, very quickly, the charter.

The next one I want to talk about is the proposed Clean Water Act, a confidential report by MOE. Have any of you seen this confidential report? Have our fellow Liberals seen this confidential report? Okay. Well, we'll go through it quickly with you.

We talked about just source water, municipal protection. It goes far beyond that. On page 2—excuse me if I go fast: "... new municipal authorities and their relation to agriculture; and the planning process." That's basically what it lays out in the act.

On page 6, it talks about protecting existing and future sources of drinking water. The other term used is protecting present and future land use control. When you talk about developing wellheads, you could be talking 5,000, 6,000, 10,000 acres per municipal well. In Winchester township it's about 50,000 acres. That's just one township. So it's very nice to say "protecting source water." We don't say "land use control."

Further down on the page—I've highlighted all these for you. It's mandatory. It's not up to the local area. There are also six components to the plan, and the legislation lays out the six components: terms of reference, assessment report, source water protection, implementation, the new power that municipalities will have over landowners, and the Great Lakes.

If you continue on to page 12—I've highlighted it. I'm just going to go through point by point, because if I follow my script, we'll be here all day. I've highlighted "the municipality must amend the applicable instruments." This includes official plans and zoning bylaws. The new Planning Act in the province of Ontario is being changed to adapt to this. Like I say, when you start downzoning property and prohibiting certain uses, that's expropriation without compensation.

Page 13: New powers will be given to the municipalities on individual properties under this act. I just came back from Europe, the war zone. They still talk about the Russians invading farmland over there. That is a tremendous amount of power. As a farmer who was threatened with be expropriation and slandered in my own house—you stand up strong.

New power to issue orders to fix up whatever the—whoever decides, and pay for it, it'll be put on your taxes. Municipalities will also have the power to designate land uses and building constructions.

Page 14: It states in the document, "... through an order or permit, to develop a risk management plan." Who's going to pay for that plan? You've got to hire an engineer, a hydrologist. That could cost you \$50,000. Who's going to review it?

It also says, further down, that the Nutrient Management Act will be prevailed over by the Clean Water Act. So we told the farmer one way, and then the act is going to tell us the opposite. Who's going to decide that?

I want to talk to you about page 15 of the document, "Consistency with Nutrient Management." There's a new science committee that has been formed to deal with this new science approach. It says that they will consult with MOE and OMAFRA, but we all know that MOE means that OMAFRA is hardly in the works any more.

It talks about new potential standards. Every time they bring in new standards, who's going to pay?

It talks about a form of credit. They talk about credit, but under the plan, if other countries develop the same plan, they have this other one, called the nutrient management yardstick. I sat on a provincial committee a few years ago that was developing this, and it's not in the final stage yet. On page 3 you'll have a graph, and you have to calculate all your input on your farms, and your output. I came back from Europe and it took a lady one day a week to fill out such a document—didn't have time to farm. At the bottom it says, "Inputs ... Outputs ... Excess nutrients." If you go over the excess, you have a tax bill put on your property. And by the way, that science committee has now been formed in every province of Canada, not just Ontario.

Page 17: We had a conservation authority talk just before us. I have a flowchart of the documentation that's going to be followed. We have no legislation passed, yet it's already in the process.

Flowchart, page 19: To your left side it says, "Municipal councils may pass resolutions to include private" drinking wells—"may pass." Whenever you develop a document and you make an amendment where it goes on, you can make those amendments later on.

Also, to your right, "Minister of the Environment may set Great Lakes targets." So everybody in watershed areas has to set themselves according to the Minister of the Environment's Great Lakes targets. Terms of reference are actually drawn up by the MOE.

Pages 20 and 21 are actually mixed up, so if you go to the next page, called 20, it says "Scientific Risk..." Vulnerable areas have to be identified. Could you stand up, gentlemen?

The Vice-Chair: You have 30 seconds.

Mr. St. Pierre: Thirty seconds? Okay; we're cutting it close.

I want to show you that these maps by our local conservation authority, which Mr. Meek was a part of, and a few other people here in the room—the maps are all done. Air photography is all done. I've criss-crossed the province. Conservation authorities have it all done. So much for your local committees and input and process.

Thank you very much, gentlemen.

There are several things I could say, but I want to finish off with a university document from 1994 that I read that laid out this process, how was going to be done and implemented. There's one particular page—this was done by Queen's University. I want to finish off by saying that due to the complication of the issue—and I've heard people speak today here—people don't have adequate technical or political knowledge to deal with the issue, so when you sit on committees, you can blow their minds out. I find a lot of times with committees that the terms of reference are already drawn up. I will read you the last paragraph:

"... public who believe they have no real decision-making power"—that's the way things have seemed to be going lately. "While the public is often consulted throughout the policy process, decision-makers independently evaluate that input and select what will be included in the final decision." I quote a university document from the Centre for Resource Studies.

The Vice-Chair: Thank you, sir, for your presentation. We now open up the floor for questions. We start with Mr. Barrett.

Mr. Barrett: Thank you for the presentation. You mention expropriation without compensation. Actually, you mention a tremendous amount of stuff here in your research. Just to focus on that, this came up yesterday; this came up in the Toronto hearings as well on Monday. As you know, the Expropriations Act requires compensation if land is taken. However, under this proposed act, in particular subsection 88(6), they've indicated that

nothing done in compliance with this act can be considered an expropriation. So we're skewed, we're hooked. That means you can't get any compensation, because whatever this does, whether it takes the use of your land or whatever, you cannot garner compensation. I consider this back-door expropriation. Very clearly, no compensation is required.

We know there are many stakeholders involved in this: There are water-takers; there are water users. I just wonder if you could comment on this further.

1050

Mr. St. Pierre: First of all, the majority of our water in Ontario is used by municipalities, the heaviest-subsidized commodity that we have. It far exceeds corn, soybeans or any agricultural program. Your infrastructure for cities, for waters and sewers, is the heaviest-subsidized commodity there is.

Secondly, the people who use that, if you compare it to Europe and other countries, have the highest consumption rate. They waste it. So I see the city of Ottawa and other town people saying, "This is a great idea," but basically the landowners are the stakeholders and have been paying the bill, and they're sick and tired of it.

We talk about expropriation: I'll deal with that. I was threatened with expropriation. Let me tell you how that works. The municipal town wanted to expropriate my property, but because MOE had only put so much money in the budget, the appraiser was told what price to put on it. Had I not been smart enough or had the financial resources to fight it, I was going to be taken for a ride.

I want to say one thing here. In the conservation authority, this tape I have right here states that when you develop zoning like the maps we have—5,000, 6,000 acres—you are protected under the grandfather clause, meaning you can still farm what you're doing. However, if you ever sell your farm to somebody else, you lose the grandfather clause right, meaning that farm can no longer be farmed the way it is. That is expropriation without compensation. No wonder it's cheaper to do it that way than to pay.

I have toured the city of New York, where they pay 100% of changes to be made, and I support that theory. By the way, the city of New York expropriated 16 towns and moved 13 cemeteries in order to have free water.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation. Do you think that cities should be required to implement aggressive water conservation programs?

Mr. St. Pierre: Twenty years I've studied water, 20 years I've been reading that, and it hasn't happened yet.

Mr. Tabuns: Thank you.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, Denis.

Mr. St. Pierre: Are my five minutes up?

Mr. Wilkinson: No, we've got plenty of time.

We just had the county of Oxford here yesterday, and they seemed to be quite far advanced on source water protection. What they're doing in that county is that they've actually been buying land, like the case in the

state of New York to support the city of New York. Obviously, they're buying what they think scientifically is important to protect, so they've done the studies to say, "Yes, we've got some significant threats there, so we're better to acquire the land." Would you agree that the county of Oxford has the right take on this?

Mr. St. Pierre: Yes. If you look at the Clean Water Act of New Brunswick, if it's a requirement—one particular well was 10,000 acres, to protect one well. The main area of land to be protected was bought out. You know, we pay engineers a tremendous amount of money, but we never, never pay the landowners. That was the cheapest thing they ever could have done, to purchase that land out.

We talk about a land stewardship program. It's a word that's used, and I hesitate on that, because they get into conservation easement and everything else. If you ever try to sell a farm with a conservation easement on it, there's not a European who will buy it. I support the idea where you buy the protected land, and anywhere near there you fund 100% of all changes done through the environmental farm plan that Gord Garlough mentioned.

Mr. Wilkinson: Yes, they use it in my county. It's great.

Mr. St. Pierre: As I used to farm 40 years ago, we used to see a tremendous amount of money for manure tanks. Since the conservation group has taken over, there's very little money that comes in: \$10,000. I got \$25,000 back in 1977, but I didn't have to hire an engineer. I didn't have to go through all the processes we have to go through. We had far more money protecting agriculture in those days than we have today.

The Vice-Chair: Thank you very much for your presentation. Thank you, Mr. Wilkinson.

Mr. Barrett?

Mr. Barrett: On a point of order, Chair: I've just received this memo from research with respect to the issue of expropriation and compensation. I think on Monday Mr. Wilkinson asked for this research to be done on whether this act goes beyond the Expropriations Act. Mr. Wilkinson, you asked whether section 83 takes the act beyond the Expropriations Act as far as not getting compensation. Research says, "I do not believe section 83 supports any taking of land without compensation."

It's too bad you didn't ask about subsection 88(6). It's also in this legislation. To that end, Chair, if I could direct research, I would like to ask the same question about this legislation: Does it permit expropriation without compensation? But don't limit it just to section 83; go down the page to subsection 88(6).

The Vice-Chair: Sir, he can answer it right now if you want.

Mr. Barrett: I'd like to get this also in written form. I'd hate to have this being circulated without the rest of the facts. There are probably people in this room who could tell us as well.

The Vice-Chair: Do you want an answer now or do you want it to be printed and circulated first?

Mr. Barrett: Yes, I'd like it in writing, an analysis of subsection 88(6). My understanding is that it does not offer compensation.

The Vice-Chair: We'll ask research to print it out and circulate it among the members.

Mr. Wilkinson: Mr. Chair, on this point, just so that there's clarity, I agree with him. I'm more than happy to have you do that, David. Again, if there's any other section where you think there's any question about this issue, that there could be expropriation without compensation, let's get that clarified on the record and ask the researcher for the Legislature to do that. Are we okay with that? So if someone then says, "Well what about subsection 115(a)?" let's take a look at it. But we agree that subsection 88(6) needs to be clarified.

The Vice-Chair: For Mr. Wilkinson and all the members of the committee, I guess the research department in the end is going to summarize all the points and put them in a format and then it is going to be circulated to all the members. That's why we keep asking research about the details. He's taking notes and he's going to do it all at one time, and hopefully at the end of the sessions we can circulate it among all of us.

Ms. Kathleen O. Wynne (Don Valley West): Mr. Chair, if Mr. McIver can briefly give us a thumbnail of the response on subsection 88(6), could we have that just so the people here can hear it?

The Vice-Chair: Yes, that's possible if he has the answer. Okay. Go ahead, sir.

Ms. Wynne: We can still get it in writing, but I would just like to hear it.

Mr. David McIver: I'll try and answer as best I can. I've been advised that subsection 88(6) does not permit expropriation without compensation. I've been advised that the section merely requires an expropriation to be done according to the Expropriations Act, but it doesn't create any new expropriation beyond section 83.

The Vice-Chair: Thank you very much. We are still going to get in writing all the details on all the questions being asked of research at the end of the committee. Is there anything else? Okay.

TOWNSHIP OF NORTH DUNDAS

The Vice-Chair: Now we move to the next presentation, which will be by the township of North Dundas. Welcome, Your Worship. You can start whenever you're ready, sir.

Mr. Alvin Runnalls: Thank you, Mr. Chair. I'm Alvin Runnalls, mayor of North Dundas, and I have with me Bill Smirle, deputy mayor of North Dundas. The presentation is a little short. We've only known that we'd be here for a few days. I thank the committee for allowing us the privilege of being here.

Before I get into the presentation I'd like to mention—and I haven't put that in my presentation—that we have always worked closely with the Ontario Clean Water Agency in North Dundas, with very good results. In hindsight, I often think that maybe if Walkerton had had

such an organization working with them, we wouldn't be here today.

1100

I thank you for the opportunity to make this presentation for North Dundas today.

North Dundas township comprises the north half of Dundas county and is directly south of Ottawa. The South Nation River drains almost all of the township. The towns of Chesterville and Winchester are served by municipal wells and lagoon systems for sewage. The rest of the population is on private wells and septic systems. Our population is around 11,000.

Some E. coli contamination has been found in settlement area wells, the result of faulty septic systems. In all cases I believe they've used ultraviolet systems, they've upgraded their septic systems, and we don't seem to have a major problem. I'd also like to point out that it isn't farms that have been the culprit. We don't seem to have any problem there at all.

Agriculture is the largest industry in North Dundas, with \$60 million in farm gate receipts noted in an agri-study completed in the year 2000. But since then, our farmers have been hard-pressed since BSE has appeared and there have been depressed prices for grains and oilseeds. So the whole idea here is that if farmers are blamed, it could make it much more difficult for them in difficult times.

There is much concern from the farm community and municipal government about the possible effects of Bill 43 because, as you can see, our water supply has been and will be a vital asset to our prosperity.

Walkerton, in our opinion, has caused an overreaction in water protection practices. Our township has had to do much more to protect its water even though, theoretically, one could drink our well water without treatment. We haven't cut corners or been careless in our practices.

This is, I think, the important part of my presentation: We have what we feel is a great example of what really needs to be done. Well 7, supplying Winchester, has been in operation for 10 years now. Originally there was much opposition from the farm community to the well because of the fear of expropriation and right-to-farm issues such as manure, fertilizer and chemical spraying. The township of North Dundas agreed to put in test wells around the well and to monitor monthly. The water has been regularly tested over this period at a relatively modest cost, and we would like to do the same with our new well field near Chesterville. Even in looking at those results, we'd have a meeting once a year and the results would all be there—no atrazine and no chemicals whatsoever, no E. coli. In one test well there was a bit of nitrogen and we don't know why—whether it was the presence of legumes. We didn't think it was fertilizer, anyway.

Regular farm practices have continued within 150 metres of well 7. The gentleman who farms there spreads manure and fertilizer and farms as he always has—no bad results to that. No agri-chemicals or contamination has appeared and the water is of excellent quality.

North Dundas has a 20-year supply of excellent-quality water. We do what we have to do to protect our

citizens. Some of the costs downloaded on us were unnecessary, we feel. Our farmers are doing a great job of handling their nutrient management and certainly can't afford to spend more of their money to protect others in the community. But I think there's still a feeling that farmers are more than willing to do their part.

Our farm community has to be properly compensated if Bill 43 should infringe on their right to farm. My OFA colleagues' pipeline compensation idea mentioned in an earlier presentation is an excellent one because it would ease concerns between the groups in the community and put to rest a lot of concerns from landowners. We feel that our well 7 exemplifies what can work in water protection at reasonable cost to everyone.

Getting back to Mr. Garlough's comment about the pipelines, when a pipeline goes through or when there's maintenance or anything, there's no concern. I've heard farmers say, "I don't mind because we know that we can trust them now." Maybe if a new municipal well is going to be established, it would be nice to have the same feeling, that we get to know that we don't have to worry about all these things.

I would like to point out that the Association of Municipalities of Ontario, AMO, notes that source water protection plans are supposed to be instruments of local creation. However, the proposed legislation makes it clear that the province is the only decision-maker. This is not a great idea when dealing with source water protection around wellheads and intakes, which is really a municipal responsibility. The new higher standards would mean that a municipality may have to install a treatment facility. In our case, that would be at least \$3 million for each of our two towns with the systems.

In conclusion, community wells, if aquifers are available, are an excellent and cost-effective source of water and are completely different from surface sources such as rivers. We believe that they should be well supervised, as our above example proves, and that our farmers can continue their farm practices. Other country residents should have to keep septic systems in order. Unused wells have proved to be a danger to aquifers and should be decommissioned.

On that point, I'd like to mention briefly an unused well in a basement in South Glengarry that nobody knew that caused a great deal of grief. There was a fire in that house. The firemen came and poured all sorts of chemicals into it. There were about four feet of water in the basement and, of course, it went down into that well and contaminated 30 other wells. It's that sort of thing—it's hard to find some of these wells. I know that South Nation and OFA have been doing programs to help close them up.

Local people should have a say in local decisions in these matters. That's why we're concerned about the committee. Nobody knows if the committee is going to stay after—elected people should be there, farmers and so on. It's easy to needlessly complicate matters when simple solutions are sufficient. We believe some of the big changes recommended in Bill 43 could be very

detrimental to our community, if things go as they could go. Thank you very much.

The Vice-Chair: Thank you very much, Your Worship, for your presentation. We'll start questions with Mr. Tabuns.

Mr. Tabuns: Your Worship, thanks for coming in today. We really appreciate your input. If in fact this legislation were amended to specifically provide for compensation and incentives, would that substantially reduce the concerns of the rural community?

Mr. Runnalls: I think it would go a long way to doing that. We feel helpless. It could put people out of business when times are already hard.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks, Your Worship, for coming in and really giving us a great example of people working together locally. There were two choices on this. You could have this kind of top-down-driven thing from the Ministry of the Environment or you could go this route, which is getting local committees, people who are drawing the same water, working together. Of course, we're doing the science, but from that you get terms of reference, an assessment report and then you get your plan.

We had the city of Ottawa here. It's got three conservation authorities, two of these forming one authority for source water. It's got multiple sources, from surface water, from groundwater. You were saying, really, that the MOE shouldn't have the final decision. I guess our concern is that, with a province so big, we need to have these plans kind of bumped upstairs to make sure you've got that coordination between them so that we don't end up having conflicts between the neighbouring source water planning committees. Because it's based on surface water but there's also the groundwater, which doesn't necessarily flow. Are we wrong to actually make sure that at the end of the day these plans—terms of reference, assessments—get back up to the ministry level just so we get that coordination?

1110

Mr. Runnalls: I believe there certainly has to be co-ordination and I agree that North Dundas is almost all one river. We take no water from that river, although I must say that Casselman is downriver and they take their water from the river.

Mr. Wilkinson: So they have an interest—

Mr. Runnalls: They have a treatment plant, of course.

Eventually, whenever our lagoons are full and treated, that water goes back into the river again. So I agree. St. Lawrence, Iroquois and Morrisburg are doing a plant right now. They take it from the river; it's altogether different from ours. In our local area, I just feel that we have proved that we can handle a situation properly, but I can see a coordination in the bigger area.

The Vice-Chair: Thank you, Mr. Wilkinson.

Ms. Scott.

Ms. Scott: Thank you very much for coming today and for your presentation. We've talked a lot about costs. You mentioned abandoned wells. We had a presentation yesterday; they said that by the time they dealt with the

abandoned oil and gas wells as well as water wells, they were looking at maybe \$10 billion. Ontario Sewer and Watermain were looking at around \$18 billion. You've got roughly \$6 million, I think. You said \$3 million per—

Mr. Runnalls: Yes.

Ms. Scott: So you're looking at possibly \$6 million in costs?

Mr. Runnalls: Yes, if we had to put in a proper—we have a lagoon system that seems to work well, and I believe the water that comes out of that is 99%-plus.

Ms. Scott: That's a lot of costs for a municipality with a low population base. I come from the same area, and they'll hear those stories in Peterborough. What do you think the funding should be? This is a big municipal download from the province, legally and financially. What do you think the province's role in cost-sharing should be?

Mr. Runnalls: Right now, I believe the act states that the people who use municipal water must pay for it. In our case, we're trying to build up a reserve. We have a problem too, because our two towns are separate. I'd like to see them linked, because one is charging a lower rate than the other. That's a political time bomb, you might say, but we're working on that. If we could join the two systems then we could do something about it, but all of it costs money. It would probably cost us \$3 million to join the systems as well. With the act coming down, they might say we can't do what we're doing. In that case, it could be \$6 million. It certainly would be nice to have some help because it's—

Ms. Scott: You're going to be in financial hardship if you don't, there's no question.

Mr. Runnalls: We would be in financial hardship, because we already have a lagoon to update in Chester-ville.

The Vice-Chair: Thank you, Ms. Scott.

Thank you, Your Worship, for your presentation.

POLLUTION PROBE

The Vice-Chair: Now we will move to the next presentation. It will be by Pollution Probe. Sir, you can start when you're ready.

Mr. Rick Findlay: Thank you, Mr. Chairman, and good morning, members of the committee. My name is Rick Findlay. I'm director of the water program with Pollution Probe.

Pollution Probe is a non-profit charitable organization that has existed in Ontario since 1969. We're supported by a donor base of approximately 6,000 people. Our mandate is to define environmental problems through research, promote understanding through education and press for practical solutions through advocacy. Our approach is to not point out problems without pointing out solutions, and today I'd like to focus on that. Working in partnership with industry, governments and communities, we offer innovative and practical policy-oriented solutions to air and water pollution issues, and

we seek to support measures that will assist in providing a clean, safe and healthy environment.

Source water protection has been a priority of Pollution Probe since we held a 1998 conference called *The Water We Drink* and subsequently released a report of the same name in 1999. We called for source water protection to become a priority months before the tragedy of Walkerton in 2000, which, sadly, opened everyone's eyes to the wide range of issues surrounding the provision of safe drinking water.

In 1999 and again in our *Source Water Protection Primer* of 2004, we said, "In the past, the emphasis has been on treating 'dirty' or contaminated raw water in order to make it safe to drink. As a result, we have developed considerable expertise in terms of drinking water treatment techniques. Now we recognize that much more" can "be done to protect the sources of our drinking water. Better source protection means preventing the kind of pollution that later must be removed or treated, and it means paying more attention to watershed management. It means taking a prevention approach rather than an end-of-pipe treatment approach. It means being more careful about land use and urban development, about where and how development occurs, and about agricultural uses, including livestock operations. It means protecting the groundwater and surface water in a watershed area. Source protection means taking an ecosystem approach to watershed management—it may also mean a more cost-effective approach to providing clean, safe drinking water over the long haul." That was all true in 1999, and we believe it's still true in 2006.

Pollution Probe was honoured to be a participant in all phases of the Walkerton inquiry. In 2004, we joined a number of organizations in the preparation and submission of a non-governmental organization's statement of expectations regarding source water protection. Through these reports and activities, and with our very widely distributed and well-received *Source Water Protection Primer*—this is a document that many of you may have seen, and I'm happy to leave it with the committee for your information, but it is widely distributed in Ontario by Conservation Ontario members and other organizations as a standard reference on source water protection—we believe that Pollution Probe has helped to define the language and the debate and the direction of source water protection in Ontario.

In February 2006 comments to the EBR Registry, Pollution Probe concluded that the Clean Water Act is a very positive contribution to safer drinking water in Ontario and a solid foundation for a comprehensive protection regime for watersheds in general. Pollution Probe continues to hold that view and we urge passage of Bill 43, with consideration of some following comments and suggestions that I'd like to leave with the committee today:

First of all, watershed protection is important for reasons beyond drinking water source protection. We appreciate that Justice O'Connor's vision of watershed protection places drinking water protection within the

context of our ecosystem and emphasizes the need for watershed protection for more than drinking water protection alone. Pollution Probe is very respectful of the proposed Bill 43 for its specified purpose of drinking water source protection. This is indeed an urgency in Ontario, and we look forward to passage of the act.

We are also mindful of the fact that there are many other important reasons for doing watershed-based planning and management that go beyond the need to protect drinking water for humans. These other reasons have to do with the overall sustainability of our environment and the ecosystem that supports natural life in Ontario and is the basis of so much of our economy and society in general. We think it's very important to regard the Clean Water Act as a fundamental building block for Ontario, and the Ontario government should build on it to create a broader framework that would address other important planning goals that all should be met by taking a watershed-based approach.

I wanted to mention briefly the precautionary principle. We believe that this principle should be inserted into the Clean Water Act, both as a guiding principle in the act and as an operationalized component of the source protection plans. Basically, what I'll suggest is that the precautionary principle means that, where there are threats of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as the reason for postponing measures to prevent the threat.

I wanted to mention the Great Lakes and the importance of the Great Lakes to life in Ontario. It's important for the act to mandate protection of the Great Lakes through provisions requiring integration with existing Great Lakes programs. The act currently allows some important provisions related to the Great Lakes and provides discretion to the minister in this regard. Given the critical importance of integrating source water protection with existing Great Lakes programs, it's necessary to ensure that source water protection principles, strategies and policies are incorporated into existing and future Great Lakes agreements and programs.

The Canada-Ontario agreement is one example. It's up for renegotiation over the coming year, and this would be a good opportunity to work with the federal government and others to advance source water protection from a Great Lakes basin point of view.

Another upcoming opportunity is the review and likely renegotiation of the Great Lakes Water Quality Agreement, a very significant opportunity to advance source water protection in all jurisdictions around the Great Lakes that could be significantly influenced by the standards that should be set by Ontario through the Canada-Ontario agreement.

It's very encouraging to note that, with the passage of Bill 43, Ontario would be seen as a leader in watershed-based source water protection amongst other state and provincial governments around the Great Lakes and St. Lawrence River basin. This should have an important economic and social benefit, as well as environmental ones, in both the short and longer terms.

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I wanted to mention the right-to-know principle. Whether in Bill 43 or through subsequent regulations, or both, I believe that the government should use the right-to-know principle as an implementation principle. Basically, this principle would be based on a presumption of access to watershed data and information unless there's a compelling reason for not providing that access. Citizens should have ready access to data in order to inform themselves and take action as individuals rather than be informed regularly and periodically about the status and progress of source water protection in their watershed.

Although the need for open discussion and communication has been addressed under the public participation and transparency guiding principle, the right-to-know principle underpins the need to provide data and information to the public that has been gathered by public agencies and governments. It also addresses the public's right to understand. It's important that citizens have adequate capacity to receive information, understand it, be empowered to take appropriate action and become involved in the implementation of source water protection plans.

The right-to-understand concept is in the best interests of all involved parties. Responsible authorities benefit from an informed public with an improved understanding of the relevant issues in their community, and data custodians appreciate the responsible and effective use of data by public agencies, especially when ownership and control is maintained through the use of data and mapping standards associated with Internet-based distributed network approaches.

So we would encourage the Ontario government to use the Clean Water Act, 2006, to develop an integrated watershed-based information system with publicly available, Internet-based watershed data and information that is consistent across the province. Pollution Probe is presently managing a pilot project in the Ottawa-Gatineau area of eastern Ontario and western Quebec called Managing Shared Watersheds that I think will be very helpful in demonstrating how this approach can be operable.

I wanted to mention the net gain concept. Pollution Probe prepared a report a few years ago for the central Ontario Smart Growth strategy panel that provided recommendations to guide future planning in Ontario, and it forms the basis for our comments on growth and planning. The net gain approach is an important principle to guide planning in general in Ontario. The approach has particular potential as a helpful tool when setting priorities in a watershed planning and management context. We realize that our comments on net gain should have particular relevance to the proposed regulations under the Clean Water Act, but given the broad nature of this comment with respect to planning in general, we want to encourage the Ontario government to include net gain as a guiding principle in the act itself. Net gain means, for example, that a wetland with a new development pro-

posal becomes a better-functioning wetland than without the proposed new development. It becomes a net gain, in other words. We're currently working with other partners, including the Toronto and Region Conservation Authority, to put the net gain principle into practice in the Duffins Creek watershed of eastern Toronto, and we think all watersheds in Ontario would benefit by the application of the net gain principle.

I wanted to touch on funding. I know that this has been addressed, and I'd like to support the comments made by the city of Ottawa regarding the Sustainable Water and Sewage Systems Act and the need for this kind of approach to be taken to support funding of the Clean Water Act.

I wanted to close with some comments on the issue of climate change and provide to the committee a report called *Mainstreaming Climate Change in Drinking Water Source Protection Planning* in Ontario. This was produced by Pollution Probe and the Canadian Water Resources Association, by Drs. Rob de Loe and Aaron Berg from the University of Guelph. What this report says is that climate change is truly happening in Ontario; that we need to take into account the effects and impacts of climate change when doing source water protection planning in Ontario. This report suggests how.

The Acting Chair (Mr. Kuldip Kular): Thank you, Mr. Findlay from Pollution Probe. I'm Kuldip Kular, Acting Chair. Now the question period starts. Mr. Wilkinson?

Mr. Wilkinson: Thanks for coming in, Rick—we appreciate it—and sharing your thoughts. You were just talking about information sharing, about how to make sure this whole process is transparent, particularly using technology that's available. I'll give you the example of the Maitland Valley Conservation Authority. They have a website called *My Land, Our Water*, and you're actually able to go right to your property and see all of the wells. A lot of the farm communities are self-identifying, because you go, "Yeah, that's right. I know there is an abandoned well. The family used to have a house on another part of the farm back in the late 1800s and there's probably a well there." So they've been able to actually get even more information just by making it accessible.

I think you're doing some work on Internet sharing. We're trying to make sure this is public and transparent. Could you just kind of share with us how you're doing that?

Mr. Findlay: We have two pilot projects under way where we are doing this. One is in the Sarnia-Lambton county area, where we are bringing together environmental data and health data from all different sources—the provincial government, the federal government, industry and local places—using standardized approaches to data and mapping to allow it all to come together and be mapped under a GIS that's web-based and accessible to anybody. This is the kind of approach that I think should be taken with all watersheds in Ontario, with all conservation authorities and with all communities, this kind of place-based approach to bringing information and

data together. The standards are there; we just need to use them.

We also need to loosen up in terms of the access to data. I'd like to just make the point that providing and publishing data to your own website allows you to own it and control it much better than by distributing a CD with data on it and hoping that people do the right thing with it. So I think these are the right directions to be taking, yes.

The Vice-Chair: Mr. Barrett?

Mr. Barrett: Thank you to Pollution Probe. You do mention the value and the importance of prevention a number of times. We know how important prevention is in the health field—health promotion, for example—and much of that based on information and education, as with environmental issues, as you've been discussing, the importance of websites and information sharing, information systems. You mention database and coordination. I guess the question is, do we need a law to do this? Do we need this legislation to force people to do websites and to share information?

My concern is that this law doesn't seem to inculcate the principles of prevention and information and training and information sharing. This is a fairly punitive piece of legislation based on fines and enforcement to deal with problems partly after the fact. I didn't hear a case to have this legislation. We know O'Connor did not ask for this piece of legislation. He said a change to the EPA would accomplish the goal.

Mr. Findlay: Well, the point I want to make is that the use and provision of data and information to all people in Ontario about their watershed is really the underlying point. Whether it happens in the act itself or in subsequent regulations under it, I'm not going to suggest at this stage. I think the important thing is to take the approach of being able to share data, using standards and the latest technology, to really empower people to understand what's happening in their watershed and let them take their own action too.

Mr. Barrett: So maybe we don't need the government to do this for us.

Mr. Findlay: I think we need the government's encouragement and the government's acceptance that these standards are important, to specify the standards and to make sure that people use compatible approaches in all the watersheds of Ontario.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Rick, good to see you. This act: Do you believe it will actually protect source water in Ontario if adequate funding is not made available from the province?

Mr. Findlay: I think funding really is an issue. I think adequate funding will be essential for proper implementation of the act.

Mr. Tabuns: That's all I had to ask. Thank you. Oh, could we [inaudible]

Mr. Findlay: Yes. I'll provide the committee with—I only brought one copy, but—

The Vice-Chair: If you give it to the clerk, the clerk will make sure all the members get a copy.

Mr. Findlay: That would be fine. Thank you very much.

The Vice-Chair: Thank you very much, sir, for your presentation.

RURAL ONTARIO MUNICIPAL ASSOCIATION

The Vice-Chair: The next presentation will be by the Rural Ontario Municipal Association. They are here? Great. Welcome, sir, to the standing committee on social policy. You have 10 minutes' speaking time and five minutes for questions, which will be divided among the members.

Mr. Doug Thompson: Thank you very much, Mr. Chair and members of the standing committee. My name is Doug Thompson. I am a councillor with the city of Ottawa and chair of the Rural Ontario Municipal Association. With me is Mr. Bill Smirle, deputy mayor of North Dundas. He is second vice-chair of ROMA, so I've invited him to come to the table with me and perhaps he can help me with some of the questions that may come up.

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The Rural Ontario Municipal Association, ROMA, is the rural municipal voice of the province. I am pleased to be here this morning to discuss Bill 43. ROMA has been involved in the issue of source water protection through AMO, the Association of Municipalities of Ontario, from the outset. The municipal perspectives and positions on all the government releases have been provided by AMO, which ROMA supports. The message has been consistent and clear, but we have not been heard on three fundamental issues that relate to municipal government: the limited role in the development and approval of source water plans; exposure to liability; and costs of implementation.

Before I get into those issues, let me just say that ROMA supports the province's goal of making our drinking water safer and we understand that this requires a meaningful, long-term commitment.

Under roles and responsibilities: Municipalities have fundamental concerns around the current structure of the proposed legislation. It is clear from the proposed legislation that the only decision-maker is the province. This is very disconcerting, especially when dealing with source water plans around wellheads and intake areas. These are critical areas of municipal responsibility, as they deal with the protection of drinking water. As the legislation currently reads, the province, by virtue of its decision-making in all aspects of the source water protection plan development, has the full ownership of the plan. While municipalities have no apparent role in the decision-making at the front end of the process, they are required to take on new substantive responsibilities of implementation.

Municipalities should, at a minimum, have the ability to set a minimum area of protection of what happens to our wellheads or intake areas.

Under liability: The second area of concern, one which has been repeatedly voiced, is in the area of liability. The proposed act provides that municipalities will be responsible for enforcement of the provisions of the source water plans. This entails prohibiting or regulating certain activities, including uses of land, to protect drinking water from potential threats. The major portion of this new responsibility is the creation of a system to review and approve applications, undertaking inspections, issuing orders and undertaking legal proceedings. As a result of these new responsibilities, municipalities will require new resources and will face high costs, including a high level of liability.

To move forward, municipalities need liability protection under part IV of the proposed act or the liability consequences for municipalities will be unmanageable.

We support AMO's position that the province should retain the permitting official function unless an individual municipality requests these powers. Some of the larger municipalities may request this role, but I can assure you that small rural municipalities will not be in that position for a long time.

We are also concerned with the impact of section 19 of the Ontario Safe Drinking Water Act and what the outcomes may be once it is proclaimed. The proposed Clean Water Act must be amended to ensure that section 19 does not apply to matters covered under Bill 43 to protect municipalities from inadvertent liability exposure.

Under implementation costs: While municipalities have no apparent role in decision-making at the front end of the process, they are required to take on new and substantive responsibilities of implementation. These new responsibilities will be costly and ongoing. This is particularly worrisome to rural municipalities. In rural municipalities the population base is considerably smaller, while the land mass is considerably larger than in urban settings. How can rural municipal governments possibly be expected to cover the implementation costs envisioned by this bill? The resource implications of the implementation requirements have not been assessed. While the Ministry of the Environment has been forthcoming in providing funds for the preparation of the technical reports and source water plans, there has been no apparent commitment to implementation costs. This continues to be a major issue.

The bill requires that official plans and zoning bylaws be updated to conform to source water plans. The policy development and defence in the official plans and zoning bylaws appear to be the sole responsibility of the municipality. This alone will be a major undertaking for rural municipalities, particularly as the majority of them must contract out these services. Beyond the document update, municipalities may have impacts on their municipal services and may be required to upgrade their infrastructure, including purchases of land around municipal wellheads, which can be a significant cost.

The most significant new responsibility is a mandatory requirement to regulate activities and land uses, which includes the requirement to establish permit officials and inspectors with the power to regulate activities. The actual extent of the permitting responsibilities will not be known until the regulations are in place. However, it is quite clear that these positions will carry a great deal of responsibility. Our concerns are with the ability to resource these positions, the liability related to these positions and with the cost, which will be ongoing and substantive.

Mr. Chair, before I continue, I wish the first paragraph on page 10 to be struck from the record. That first paragraph on page 10 is not to be part of the record, okay?

The Vice-Chair: Okay.

Mr. Thompson: Just to continue on, we further support AMO's request that a stable source of provincial funding be provided to municipalities to cover the cost of the conformity initiatives and impacts on municipal services.

Should the bill not be amended as suggested in respect to the provincial retention of the permitting official's and inspector's functions, then a stable source of provincial funding must be secured to cover the cost of these functions and the associated costs relative to liability protection.

That concludes my remarks.

Ms. Wynne: Mr. Chair, could I just have clarification? I wasn't sure which part of the presentation Mr. Thompson wanted to strike.

The Vice-Chair: Ms. Wynne, first we ask the clerk and the legal department if we can take it out or not. We're not sure if we can. We'll get back to you in a second.

The Clerk of the Committee (Mr. Trevor Day): Can you just clarify which section of your written document?

Mr. Thompson: Yes. In your document it's page 4, paragraph 1.

Ms. Wynne: So, where it starts with "We support"? Okay. Thank you.

The Clerk of the Committee: Just that one paragraph, sir?

Mr. Thompson: Yes.

The Vice-Chair: Is it okay by the legal department? It will be taken out; no problem. Thank you very much for your presentation. Now we'll go back to the question period. We have with us Ms. Scott.

Ms. Scott: Thank you very much for appearing here before us today. Certainly the themes are coming out. It's a large municipal download to you financially and liability-wise.

You've mentioned some things you'd like to see changed. If things are not changed within the act, especially in the legislation—we want to change what the funding formula is going to be because municipalities can't plan ahead. I think—I'd just like you to confirm—there are going to be financial hardships for a lot of municipalities, especially rural municipalities. I know that where I come from it's going to be severe. Do you

think we actually needed the Clean Water Act or could we have done it within the existing legislation? So, financial, and does the act really need to be?

Mr. Thompson: I think, in answer to your first question, being a rural councillor in the city of Ottawa, there's a dichotomy there because 90% of our land is rural, but we probably have the financial resources to implement some of these. But speaking on behalf of ROMA, I think we all agree—and I think it's AMO's position—that there is about \$2 billion in downloading deficits between the province and the municipal governments. We're just going to add to that. Some arrangement has to be made that funding is and should be the major responsibility of the province.

My opinion is that we do need the Clean Water Act. In our opinion it ties a number of things together. We all agree across the province that we need to protect the water sources, so I think this bill will bring a lot of those other initiatives together.

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The Vice-Chair: Thank you, Ms. Scott. Mr. Tabuns?

Mr. Tabuns: Thank you very much for the presentation. Without funding, do you think that this bill can actually be implemented? Will rural municipalities be able to deliver the implementation, monitoring and regulation that are required?

Mr. Thompson: There would be municipalities that could not afford to implement those. There was a question asked earlier when the city of Ottawa was here, "Where would those costs go?" and I think staff said that it would go on the taxpayers; it would be a decision of the city council. Although I do believe in the bill, I certainly would be reluctant to add further costs to the taxpayers, because I think there is a large deficit in downloading costs from the province. For smaller municipalities which ROMA represents it would be a tremendous hardship, and probably some municipalities would not be able to afford the costs unless there was provincial assistance.

Mr. Tabuns: Thank you.

The Vice-Chair: Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: Thank you, councillor. We appreciate your coming and representing ROMA. It's a group that I deal with all the time.

I wanted to get just two things. The county of Oxford was here, one of your members, saying that they really felt that Bill 43 was required to fill some gaps as they were doing some very progressive work to protect their source water. They have a very complicated kind of headwater situation there. I know the county is a great and active member of ROMA.

Just give me your point about liability so we're clear. We looked into that, particularly about part IV of the bill, where you have a risk management official. What it's saying here is that in regard to liability, we would use the same thing we do with all municipalities, which is that you'd have the good faith principle, which protects municipal staff or a delegated authority—because the

municipality may delegate it to somebody else to do this, so you're coordinating and not reinventing the wheel here and spending extra money. During the execution of their duties, it would relieve the municipality or their authority from liability associated with the decision that's made either to issue or not to issue a risk management order following the approval, and it does not require that official to reduce significant risk to zero; they just need to mitigate the risk so that instead of being significant, it isn't anymore. So you're kind of narrowed down to where there is a significant threat to the common source of water that people are drawing their drinking water from. If that got clarified, would that help on that liability issue?

Mr. Thompson: I think that to a certain degree it would. We've discussed this, obviously, both at AMO and ROMA, but the liability is one of the major concerns. I was here for most of the speeches, the presentations, this morning. I think that is an issue that is prevalent across probably most of the province, if not all of it. So if that issue were addressed, it would put a lot of people's minds at rest.

Mr. Wilkinson: I think we've got it addressed but maybe we haven't got that communicated well, so we'll definitely make sure we get that reviewed before we go to clause-by-clause.

Mr. Thompson: That's a consistent concern that we hear at ROMA and I hear individually from member municipalities that I visit from time to time.

The Vice-Chair: Thank you very much, Mr. Thompson, for your presentation.

GLENGARRY FEDERATION OF AGRICULTURE

The Vice-Chair: Now we'll move to our next presentation, by the Glengarry Federation of Agriculture. Welcome to the standing committee on social policy for Bill 43. When you're ready, you can start. You have 10 minutes for speaking time and five minutes for questions.

Ms. Linda Vogel: Good morning. I'm Linda Vogel and this is Martin Lang. We are here to represent the Glengarry Federation of Agriculture.

The GFA represents 560 farm families in Glengarry county. For farmers, water is a valuable resource. Without an adequate supply of good, quality water, our livelihood is non-existent. Bottled water is not a resource we can use to water livestock.

Bill 43, the Clean Water Act, has many concerning issues. While we will be the first to admit that the protection of our water resources is important, it is vital that you recognize the negative impact that a "possible threat" can have on a farm operation.

We are already governed by the Nutrient Management Act. We are required to complete a nutrient management plan that costs anywhere from \$2,000 to possibly \$8,000 or \$10,000, to meet the requirements of some guidelines to prevent possible threats, again. To meet this regulation we do soil sampling and evaluations of our farmlands.

The initial intention was that, using the science-based knowledge of our farm, we would be limited to the manure to be spread on each field to grow specific crops, while maintaining a specified distance to watercourses. For example, we personally built a second barn in 2004. The plans for the first barn were engineer-approved in 2002. The same plans were used for this second barn. During the nutrient management process, the construction was held up for four months while the regulations were agreed upon—then to be able to use the same plans as the first barn. Due to meeting the requirements of possible threats, we spent \$15,000 in additional fees—all engineer fees. We did not qualify for any funding to support these additional expenses.

If new regulations are implemented through the Clean Water Act, full compensation must be mandatory, regardless of the size of operation or new or expanding status. This compensation must be extended as well to the loss of use of land or buildings.

As farmers, we respect the environment and take every precaution necessary to be aware of potential issues. Remember, farmers rely on land and water for livestock and crops. We cannot jeopardize either without serious repercussions to the livelihood of our farms.

We, as farmers, are the minority. We do own the largest portion of the Earth, though.

Another example is in Crysler of North Stormont. A water contamination problem was identified. The cause? Well, the dairy farmer was charged and had to spend excessive amounts of money to correct his faulty manure pit; acceptable to correct this problem, yes. If you enter the MOE office in Cornwall and read the documentation on the contamination, it will show that faulty septic systems were as equal a contributor as the farmer's faulty manure pit, but MOE will agree that the faulty septic systems have yet to be corrected. Where is the justice? Cities dump sewage after heavy rains. Will these issues be addressed? These two issues, faulty septic systems and sewage being dumped from cities, are intended incidents. Walkerton has been proven not to have been caused by the farms, yet new legislation is constantly picking on the minority: the farmers.

Another issue is strategic location of future wells. A farm family near Moose Creek has lost use of a large sum of acreage due to Moose Creek needing a new well. The municipality chose an area that eliminates the farmer from spreading manure or fertilizer on these fields due to potential risks, and there is no compensation.

With nutrient management you must have the conservation authority sign that you are not in a 100-year flood plain, or no building permit. This act is repetitive of issues that have been rectified or is placing demands that have been dealt with in the Nutrient Management Act. Many farmers have already complied with the regulations of nutrient management, most with no compensation. These farms should be grandfathered past this new legislation. Nutrient management does protect the water and environment, and by meeting these demands, they have proven to be using best farming practices, including protection of our water sources.

This act states that authorities and maintenance inspectors can enter the property or buildings without consent. This is not acceptable at all. Biosecurity is a large part of farming today. Many farms have strict protocol to protect their operations. We are not afraid of making you sick, but you could wipe out our entire operation by bringing a disease into our operation.

With land being zoned agriculture, we are supposed to have the right to farm. This right is being eliminated. In North Glengarry, for example, to have the right to farm and build a barn you must apply for a building permit, comply to the minimum distance separation and include a hydrogeology study, a nutrient management plan, and now we are looking at a risk management plan. Our right to farm is not a right at all.

Our main concerns here are:

- compensation for financial expenditures and loss of use of the land;
- this act superseding the Nutrient Management Act and the land use act;
- the right of entry/biosecurity;
- confidentiality;
- issuance of permits.

Remember: "Farmers Feed Cities." If you keep putting restraints on us we will not be able to provide the quality, safe food we do now, and you will be responsible for relying on another country to feed our own. Thank you.

Martin has some things to add there.

Mr. Martin Lang: Thank you, Mr. Chairman and members of the committee, for having the chance to speak this morning. I guess we've got a few minutes left, so I'll go through a little bit more.

Some current concerns that we have—Linda has mentioned five there, but in that also would be section 54, inspections. I don't think the right to enter without a warrant needs to be in there at all. I think MOE already has the right to enter without a warrant for spills or emergency situations. I think that should be good enough. We don't need to add more incidents where they can enter without a warrant.

1150

Another thing in that same section 54 is the environmental farm plan that's been very, very successful. We've pushed it hard. Our organization, and many of the farm groups, have pushed hard for that. The reason it has worked is because we guaranteed the farmers that this was confidential. In that section, I do not see anything that says that they will not touch the environmental farm plans. It says they can enter and take whatever papers they want. I'd like to make sure that that is confidential and that it remains that way. It was guaranteed that way when the farmers did these plans.

The next thing—and I know it's been touched on a little bit—is this permit or permit official. I guess there are some changes coming. We haven't seen anything in writing yet, so I'm going to harp on it a little bit more. I don't like the idea of the building inspector model, where you've got one fellow going around the countryside making decisions, telling me maybe what I can do and

what I can't do on that section of land. I think it's going to have to be a little more involved than that. We definitely don't want it to go that way. I understand maybe it's being changed, but keep working on it.

Linda touched quite a bit on it: Compensation is a big, big issue. You've got to have compensation. I know the municipalities want it, and you know, if they don't get it, it's going to go down to the farmer, and the farmer's going to be the guy. There were some questions earlier about expropriation. Maybe legally it's not expropriation if you tell a farmer that he can't spread nutrients on a piece of property, but he has lost the ability to compete with his neighbours. He's trying to make a living off that piece of property. There has to be compensation. He also has lost the ability to resell that property for a decent value, because people are going to know the restrictions that are on it. So compensation is a big, big thing. It's got to be looked after. It's got to be in place, and it should be at 100%. We're looking to protect something for other people's interests as well as our own. It can't be just left on a minority of people to look after funding it.

I'd like to refer you to OFEC's and OFA's presentations. The reason for that is that we're a small, local organization. We're volunteers. We have full-time jobs farming, and some of us have off-farm jobs as well. I think those presentations were very well done. Basically, we've hired people to do these, so I want you to look at these very seriously. When you get to the end of the thing, just picture in your mind as if there are 40,000 signatures at the end, because that's what these groups are representing, maybe 40,000-plus. We're not going to hit everything, obviously. We're not experts on the bill. We're farmers in this area, and we're happy to make a presentation, but I want to make sure that you're looking at those presentations and realizing that's from 40,000 farmers.

Thank you.

The Vice-Chair: Thanks to both of you for your presentation. We have some time for questions. We can ask Mr. Tabuns to ask the first question.

Mr. Tabuns: Thanks very much for coming in and making this presentation. I've asked other groups today, and I'll ask you: If this act actually had in it a provision for a water stewardship fund that would help deal with the financial issues that many have raised today, would that go a good distance towards making this bill acceptable to people in rural communities?

Mr. Lang: It would certainly help. It was brought up earlier—and I'm not sure who it was; Gordon Garlough or somebody brought up the pipeline issue. If there's money available and it can work like that, when the pipeline comes through—we've had them through our property. It's very well discussed. We know ahead of time the compensation is 100%, and they're usually reasonably generous. They're not going to quibble with the numbers a little bit. If that happens, farmers, for the most part, are fairly trusting of them now. You know we're still going to watch, and I still think there are some aspects of the legislation that we don't agree with 100%, but the funding goes a long way.

Mr. Tabuns: Okay. Thank you.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Martin and Linda, thanks so much for coming in. We appreciate it.

Just getting back to a couple of issues, on the bio-security, we were fortunate we had the minister in Toronto on Monday talking about how we're going to make sure that we have amendments to ensure that bio-security is enshrined right in the act so that just is a requirement, that anybody who needs to deal on-farm understands that and has to be aware of that.

The other thing about the environmental farm plan, which I know in my riding in Perth county and in Middlesex is going over great—I mean, people just love that. By getting rid of the building inspector model and going to the risk management model, your nutrient management plan and your environmental farm plan are key, because you're going to say, "Well, there might be a risk, but I've already mitigated. So don't make me re-do it again, because I've already done it." So you have to be able to share that information, but you have to raise the issue of confidentiality.

I know the Ministry of the Environment has signed a memorandum of understanding with OMAFRA to make sure that the information that we need to see is the results. We really don't see the confidential part. That's not important, because there is a proprietary interest in that environmental farm plan and nutrient management plan. I mean, it's got a lot of information. So it's just so that we get the results, and that will allow the risk management person, as they negotiate, to be in a position so that they understand what you're doing and can take that into account. A lot of that is coming from OFEC. This is still kind of a work in process. We definitely have heard from you and others about the issue of compensation. We really appreciate that you're able to come and share that with us.

The Vice-Chair: Ms. Scott.

Ms. Scott: Thank you very much; a really good presentation. I mean, you're farmers; you're out there; you're living it; you've been responsible—nutrient management plans, environmental farm plans. People in rural Ontario, especially the agriculture sector, have done more to work to be environmental stewards than the city, just because we've had to have nutrient management plans and environmental farm plans.

You did mention you have a nutrient management plan. This act is going to come and supersede it. That could change your whole nutrient management. I know it's best practice, but it could possibly change it. If it takes acres out, then your nutrient management plan becomes imbalanced. I just want to highlight that point again, that they could have to go back to the drawing board. OFEC has done an excellent job, I must say, on the amendments that they've brought forward.

Can you just say, even from your area, from talking to your neighbours and so on, if this Clean Water Act goes through the way it is, how many people will just leave the land because they won't be able to make a living off

the land; they'll just leave, and more farm families will go? Do you have any idea? Have you talked with neighbours?

Mr. Lang: It's very, very hard to know. You know yourself, the regulations aren't in here yet. We don't know exactly what that's going to entail. We do know that people are pushed pretty hard right now. There are some sectors doing fairly well. They're worried about their future—you know, supply-managed sectors are concerned about the future, but they're stable and doing well. Some of those sectors can afford a little more than some other sectors. But it's definitely going to have an impact on what happens out there if this goes through. You know yourself it's pretty hard to say, but farming won't look the same if it goes through, I think.

Ms. Scott: That's right. Thank you.

The Vice-Chair: Thank you very much for your presentation.

ONTARIO LANDOWNERS ASSOCIATION

The Vice-Chair: The next presentation will be by the Ontario Landowners Association.

Mr. Randy Hillier: Good morning, everyone. I prefer to stand when I speak. I'm sure you'll be able to hear me, and I hope everybody else will be able to hear me. Can you hear me, Hansard? Okay.

My name is Randy Hillier. I'm president of the Ontario Landowners Association. I want to thank you all for coming up here. I know we have a lot of members, employees and staffers of MOE and political staffers up here today. Many of us here in rural Ontario were quite confident that most people from Queen's Park thought the 401 ended at Oshawa, but obviously there are a few who know how to continue on.

I think I'd better warn you as well that there is some risk in Cornwall, especially when you're in the presence of environmental people, that you can be arrested on the public roadways here, so heed yourselves when you're walking outside. If you're in the company of Ministry of the Environment people, arrests could be imminent.

I'm not going to go into the details of Bill 43. You're going to hear all kinds of details; you've been hearing all kinds of details. You'll be hearing all kinds of proposed amendments. I think what we have to do is take a step back and look at some of the principles of Bill 43 and the principles of democracy and the provincial Legislature. The people on this committee are members of the provincial Legislature. They have an obligation, a responsibility, to prevent injustice. That is indeed the primary responsibility of a legislator: to ensure injustice does not take root in our society. Bill 43 is just one more example of the Legislature creating injustice instead of preventing it.

There has been much talk about expropriation without compensation, the entry into private lands, the ability to cease and desist activities and operations on land, all without compensation. I think what we have to look at here is that Bill 43 is the latest. It seems that there's a

large, never-ending grist mill in Queen's Park that just continues to grind out stupidity and injustice: The Places to Grow Act, the Nutrient Management Act, Bill 170, the Safe Drinking Water Act, the Clean Water Act. We can go on and on and on, and all of them are targeted at rural Ontario.

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This really is a bit of a charade. A number of our members met Mr. McGuinty last week down near Belleville and he reiterated a statement that he made in the House earlier this spring, where he said "Bill 43 will be passed this year." He said that before the committee hearings were even mentioned. Last weekend, before the committee hearings had even started, Mr. McGuinty again reiterated to the press and to our members, "This bill will be passed." He mentioned it again in a Toronto Star article on Monday: "This bill will be passed."

So what is the purpose of this committee if it has already been deemed to be passed by the Premier of this government, this province? And it's as much a charade—just like the objectives of Bill 43. I've got a little document here; I'm going to leave it with you. It was taken off the PollutionWatch website this morning. PollutionWatch is in conjunction with Environmental Defence. It shows the 20 largest polluters of water in Ontario. The first one is the Ashbridges Bay Treatment Plant, city of Toronto. The next one is the Robert O. Pickard Environmental Centre, city of Ottawa. Ashbridges is only one of the plants that serves the GTA: 11,705,697 kilograms of pollutants released in 2003. It has the honour, of course, of being the number one polluter in the whole country, not just Ontario.

There is a danger to our groundwater and our surface water, but the danger is not throughout rural Ontario. Look at that list. Look at the evidence. The city of Ottawa, Toronto, Halton. Number 4 is the Humber Treatment Plant, number 5 is the Durham treatment plant, number 6 is the city of Guelph—on and on. The first 20 are all government-owned facilities.

Bill 43 targets individual, private landowners as the villain for clean water, as a danger to our environment. Section 14(1) of the Environmental Protection Act—people should all read that. Under the present Environmental Protection Act, no contaminants, no pollutants can be put into water or air. The Ministry of the Environment has full authority and jurisdiction to prevent any contamination or pollution of our resources, and it is a broad, sweeping and all-encompassing section, section 14(1).

That's where the dangers are. It is not Buddy's farm, it's not Buddy's sawmill. This is where the danger is. If the Legislative Assembly is really concerned about our environment and about protecting our environment, then look at the causes and the dangers to it. This can be fixed very easily, those 20 plants. There doesn't need to be Bill 43 that allows government people to enter my property at will. Fix that plant. That can be fixed very quickly, very easily.

This is not about Walkerton. Bill 43 is not about clean water. It is about control, about authority. It's about

injustice. And you people are going to be held accountable to prevent injustice in this province. That is your role.

I've left you three documents. The first one indicates the dangers of Bill 43. The second one shows a simple solution, a solution that the landowners in the South Nation Conservation Authority put together, a solution that says, "We will not enter property without warrant." It says that people have the freedom to own, use and enjoy their private land and properties, and that if this freedom is going to be infringed upon for the public's benefit, then the public will pay full, fair and timely compensation—nice and simple. It's a concept that every reasonable individual can understand, appreciate and support. Anything less is theft, is legislated thievery and stealing, and the people in rural Ontario will not accept it.

The last page is the consequence should you not recognize the solutions. All this legislation that is coming down on rural Ontario is showing contempt for us; it is showing disdain for us. When there is contempt and disdain by government to the people, there is only one consequence of that: It builds hatred, and from hatred in society there is a far worse consequence. Violence is the only thing that comes out of hatred.

This Legislative Assembly must stop this contempt for rural Ontario, must begin to respect the people of rural Ontario and our good stewardship. Indeed, when I look out on my front yard and look at the hundreds of acres of bush and wetlands and fields, it does not remind me of Queen's Park at all. It doesn't remind me of their Ashbridges Bay Treatment Plant. That is where the clean environment is, because we know how to take care of our land. Thank you very much.

The Vice-Chair: Now it's time for questions. We'll start with Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming, Randy. My question has to do—we just went over this with the committee. We had the legislative researcher verify for us that this myth is going around that somehow this bill allows for expropriation without compensation. I think the debate that's been going around the province is, "Who pays?" Should it be the people drawing the water or should it be the municipality or should it be the province? I know that question was asked. We've asked, not in any political sense, but the people who are the experts from the Legislature who are independent tell us, "No, there isn't anything in this act that allows for this lack of compensation." The debate is, who? I'd be interested to know from you, given that, where do you think the fairness is? Should it be at the provincial level or should it be the people drawing the water?

Mr. Hillier: It should be from those who benefit from it, whoever benefits from this restricting of operations or the restricting of use. Who is deriving the benefit? Certainly not the owner of the property. So if it is being done for the municipality, then the municipality shall pay. If it is being done for many municipalities, then it's provincial. If it extends and transcends a single municipality, then it's obvious that a greater number of people are benefiting. A greater number of people shall pay.

Mr. Wilkinson: Great. To back up, about the Premier, of course this process is that bills get amended. So this public hearing happens, and then there are amendments that are put forward by all the parties. Of course, it's up to the government if they introduce the bill to call it. It's up to the people in the Legislature to decide whether or not to pass it up or down. But the bill will be called because all parties have agreed that we're doing this, then we're going to amendments in the second week of September and then it's to be called back to the Legislature for third and final debate. I don't think we're being presumptuous. It's just the process we have in a democracy about how these bills work their way through the system.

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Mr. Hillier: I understand the process. It's seldom that we see legislation with the language in it that this contains. It's seldom that we see a Premier so adamant that it will be passed within a certain time frame, even before the committee has begun to hear proposed amendments or changes. One of those amendments could be to kill Bill 43. If the committee comes up with the idea to kill Bill 43, will Mr. McGuinty accept that amendment? He has told us no.

Mr. Wilkinson: It's interesting. All three parties actually ran in the last election on bringing in source water protection, so it would be interesting to see if you could get all three parties to agree that they shouldn't do what they promised to do on the campaign trail.

Mr. Hillier: That's usually not very difficult.

Mr. Wilkinson: I said "all three parties."

Mr. Barrett: On a point of privilege, Mr. Chair: Just before I ask my question, I might ask Mr. Wilkinson to speak for himself. I'm not sure what parties he's referring to, but we made a commitment to ensure that the recommendations of Justice O'Connor were implemented. This piece of legislation is not one of the recommendations of Justice O'Connor. Justice O'Connor suggested a change to the Environmental Protection Act, not a full-blown, stand-alone piece of legislation. So I leave that as a point of order and I would like to go on to my question.

The Vice-Chair: Go ahead, sir.

Mr. Barrett: Sorry for that interruption.

Mr. Hillier: I've been interrupted once or twice before.

Mr. Barrett: Really? You can interrupt me if you wish. I might get a bit more airtime.

Looking at your written submission—Ontario land-owners support clean water objectives. I have seen a copy of your agreement with South Nation Conservation. I find that a proactive approach. It seems to me that in this process the real burr under the saddle is this particular—this isn't legislation yet. This is a bill; this is a proposal. A serious threat to property rights, as you say, is a threat to simple justice and due process.

There are other ways, as opposed to a draconian approach. We heard other ways from one of the environmental groups this morning you may have been referring to, Pollution Probe, with a very heavy emphasis

on prevention, information, education, training, co-operation and coordination. You don't need a law; you don't need a hammer to force people to do that.

I think that many of the organizations and many of us have the same end goal, and there are just different means to that end. You've made one suggestion: Kill the bill. If that isn't going to happen under a majority Liberal government, where do we go from here?

Mr. Hillier: Where do we go from here? Time will tell. I can tell you, if the bill passes the way it is right now or without significant modifications to respect justice and respect private property owners, there will be trouble in rural Ontario, and not just trouble as far as another nail in the economy of rural Ontario, which has suffered enough nails. We will not let MOE or conservation authorities or any other authority enter our land. We will prevent them; we will stop them. We are not going to allow our province, our country, our homes to be treated without respect. We're not going to allow them to be treated with contempt. They will be prevented; they will be stopped.

This is where we have seen such a gradual and incremental change in governments' perception and attitude from years ago when I was a young fellow. People had due respect for government and government also had respect for us. Education, sensible discussion and reasoned actions were the order of the day, not the hammer approach that this Bill 43 further advances. We are not just nails to be pounded by your legislation.

Mr. Tabuns: Thanks for coming in today and making your presentation. You argue very well—I think that's generally acknowledged—that municipalities should bear the cost of protecting the source of their water. I would assume you think that other major water takers that depend on high-quality water should also pay for the protection of the water they depend on as a raw material. Is that correct?

Mr. Hillier: Yes. I think where you run into a little bit of a snag there, of course—we'll just focus on the municipal side for a minute. Municipalities essentially only have one avenue for raising revenues: property tax. If the municipality is going to have to take on all of this burden, I think we're somewhat corrupt in our thinking to leave it just on the property tax base. There has to be some way for the municipality to pay for this new standard, however that will be. There must be some mechanism there or else property taxes will skyrocket.

The Vice-Chair: Thank you for your presentation.

DAIRY FARMERS OF ONTARIO

The Vice-Chair: Our next presentation will be by the Dairy Farmers of Ontario. Welcome. You can start when you're ready.

Ms. Norma Winters: I guess I drew the short end of the stick here today, having to follow Randy. He's a tough act to follow.

As I'm aware, you've already heard this presentation from one of my colleagues in Walkerton, but I believe

our message needs to be heard more than one time. I also believe that politicians repeat themselves once in a while, so I'm exercising my right to do that today.

On behalf of Dairy Farmers of Ontario, I'd like to thank the committee for inviting us to present our views on this very important legislation. Dairy Farmers of Ontario markets all milk produced in the province, from the 4,800 dairy farms in Ontario, under the authority of the Milk Act. Dairy farming is the largest single sector of Ontario agriculture.

My name is Norma Winters. I am a dairy farmer in Stormont county. We have a family farm and milk about 40 cows. I am here today as a board member of Dairy Farmers of Ontario and am presenting on behalf of our organization.

Dairy farmers understand the importance of the legislation and why they must be vigilant in exercising best practices in environmental stewardship. We are proud of the way dairy farmers stepped up to the plate since the passage of the Nutrient Management Act, and we are certain that with the right clean water legislation in place and with the economic incentives they need, they will step up again.

My presentation today has three sections. In the first part, we want to clearly express support for the objectives of the Clean Water Act, while raising three fundamental concerns with the proposed legislation. In the second part, we want to make some specific recommendations. In the final section, I will make some brief summary remarks.

I will start with our concerns. The first, fundamental concern is that while we support the objectives of Bill 43, we view the current legislation, as Mr. Barrett has stated, as being overly punitive and not a positive improvement over existing legislation to improve Ontario's drinking water quality or risks. All impacted business and landowner groups agree that it is vital to have a safe and reliable source of water in this province. At the same time, it is important to bear in mind that high standards for drinking water are already in place in Ontario. Further, there are laws in place to regulate and punish polluters. In this context, it is difficult to understand the business case and administrative need for additional rules, regulations and enforcement protocols.

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Ontario's dairy farmers do not take exception to properly framed and enforced legislation to deal with proven polluters. Provincial MOE enforcement with trained staff following proper pollution abatement procedures under the existing Environmental Protection Act or nutrient management legislation has proven to be a workable approach, as John Meek from the MOE stated earlier in his presentation.

Our concern is that the proposed bill appears to shift the burden of proof to the agricultural landowner. Under Bill 43, the process puts the onus on the agricultural landowner to satisfy the municipal permit official that the normal, legal farm practice will not cause harm.

Rather than creating a predictable, uniform and scientifically sound framework for effectively managing

legitimate risks, the proposed Clean Water Act establishes a regulatory process that could result in overly risk-averse municipal permit officials applying the precautionary principle to place an unfair and unnecessary burden on the landowner.

In contrast, there is a need for targeted education, incentive and implementation procedures and protocols based on risk and linked to local source water protection plan objectives. It is disappointing that Bill 43 is entirely punitive and does not focus on the development of a practical and workable framework for making positive water quality improvement progress.

DFO's second fundamental concern is that Bill 43 is vague on key definitions and scope which, because of farming's large land base, places a disproportionate burden on farmers, and this burden could well grow over time. Agricultural groups are confused, as you have well heard from the presentations over the last few days, by the inconsistency between the broad purpose statement found in the Clean Water Act, which states, "The purpose of this act is to protect existing and future sources of drinking water," and assurances that the focus of the proposed legislation is municipal residential drinking sources. Further, our concern is that surface water intake zones could impact a much larger land area than the municipal wellhead protection zones, as Mr. St. Pierre brought up in his presentation, as well as the Glengarry Federation of Agriculture.

The definitions of terms such as "significant drinking water threat" in Bill 43 are unduly broad and subjective. Our interpretation is that virtually all activity in a source protection area will be designated, at first instance, a "drinking water threat." This definition fails to recognize existing approvals, guidelines or standards that govern normal agricultural land use. The resulting uncertainty, and its consequent investment of resources to deal with any and all such threats, is unreasonable.

Agricultural producers within designated wellhead and surface water protection zones may be subject to "permit official" conditions that go well beyond the normal agricultural due diligence standards.

DFO's third fundamental concern is that there remains a lack of commitment for fair funding principles, as Mr. Runnalls stated in his presentation. The implementation cost and the environmental human health benefits of Bill 43 are unknown and would appear to fall disproportionately on rural businesses and landowners. The bill appears to be structured so that all of the implementation cost is picked up by either the impacted municipalities or the impacted landowner. It is essentially a case of expropriation without compensation. With this, there seems to be some discrepancy here. As Toby stated earlier, under 88(6), according to our legal counsel, the bill can expropriate without compensation. I'm not a lawyer, so that will be between lawyer and lawyer.

It is our position that Bill 43, as it stands, could have serious financial consequences for landowners, operating to effectively expropriate lands without any apparent compensation. There should be clearly defined protocols

that source protection authorities and municipalities can use to negotiate fair solutions with impacted agricultural landowners. The concept of a provincially supported agricultural stewardship fund, which has come up often today, to assist impacted landowners and municipalities should be specified in the act.

Dairy Farmers of Ontario's recommendations to the committee are:

(1) Reconsider the permit official approach, as Martin Lang spoke about earlier, in favour of a more proactive and positive approach that focuses on achieving the bill's objectives. More rules, regulations and bureaucracy will not help to achieve source water protection goals. This approach appears destined for conflict. Rather, the focus should be on planning, education and financial incentives.

(2) Funding issues need to be addressed in an equitable way as an integral part of Bill 43 as recommended by the Advisory Committee on Watershed-based Source Protection Planning, 2003. The advisory committee recognized that one of the guiding principles of successful source water protection is cost effectiveness and fairness: "The costs and impacts on individuals, landowners, businesses, industries and governments must be clear, fair and economically sustainable." This is on page 4 of the advisory committee report. Dairy Farmers of Ontario believes that issues of who pays must be dealt with up front and in a clear and transparent manner.

We believe that acting on these two recommendations would address some of the important concerns that stakeholders have about Bill 43 and greatly enhance the achievement of the shared societal goals that are the objectives of the bill.

In summary, Mr. Chairman:

—Dairy Farmers support the goal of clean water for everyone but have concerns about the approach being proposed with Bill 43.

—We think the approach is destined for conflict with orders and permits, permit officers, inspectors and enforcement officers, new municipal authorities, limited appeal processes and no financial assistance.

—Our other concerns relate to a lot of uncertainty and vagueness around the bill, including how much land and where, what activities will be regulated and who pays for implementation.

—We feel the government needs to present a more balanced approach which includes co-operation and teamwork with those who are likely to be most affected and addresses the need for financial assistance.

Thank you for taking the time to listen to my presentation. I am by no means an expert on Bill 43; that is why beside me we have our consultant Chris Attema. I am a DFO board member, as I stated earlier, plus a concerned businesswoman, a farmer, a mother of four who lives eight minutes from here, who has some concerns with the approach taken by Bill 43.

Dairy farmers, like myself, are good stewards of our land. We live on our land and our families drink the water from our wells on our farms. As Randy stated,

there are other areas than rural Ontario to focus on. The issues we have lie, not with the concept, but with the approach of the legislation.

Thanks again, and Chris welcomes any questions you may have.

The Vice-Chair: Thank you, Ms. Winters, for your presentation. You used the exact time. Now we open the floor for questions. We ask Ms. Scott for the first question.

Ms. Scott: Norma, you did a fabulous job, and Chris has been doing a lot of work. My background is the health field. You hit it right on the head: We all want to accomplish the same goals. But I dealt with disease prevention and health promotion. Pollution Probe mentioned it; many groups have mentioned it here today. The approach that's in this bill is going to lead to confrontation. It's not going to accomplish its objectives. It's too heavy-handed.

My question to you is, do you think that we can change this bill enough now, or should we scrap it and start again? Where do you think we should go from here, whoever would like to answer the question?

Ms. Winters: This kind of leads into what I was hoping to get in here today. What I would like to stress—this has come up earlier today too—is that changing the name of the permit official to a risk official is not enough; the mandate must be changed. We have to negotiate solutions, offer technical assistance and offer cost share. I guess that sums everything up.

Ms. Scott: So we've got a lot of work to do.

Ms. Winters: Uh-huh.

Ms. Scott: Okay. Thank you.

The Vice-Chair: Thank you, Ms. Scott.

Mr. Tabuns.

Mr. Tabuns: Thanks very much for the presentation. You did do a good job, by the way.

When we think about water, we think about a resource that's really crucial to our lives, but economically we have there an asset in this province that's worth trillions of dollars. If you were to buy this much water in a bottle, you'd be paying about 50 cents; about a buck for 500 litres, so about 50 cents there. It makes sense to me that farmers do get support from water-takers for protection of water sources. Do you think that rural communities would support putting the onus for cost or protection on large water-takers like municipalities or large industrial operations that depend on the cleanliness and the safety of that water for their operations?

Ms. Winters: I think I'll pass this one over to Chris.

Mr. Chris Attema: I think the core message that you've been hearing in Toronto and Walkerton and again today is—and your question drills at this same question—the need for an upfront and transparent discussion over the question of who pays. That has come up repeatedly, and I think that's where we need to focus our energy in this debate. Clearly, there are alternative methods of allocating costs fairly, and I think that needs to be explored and debated in greater detail.

Mr. Tabuns: All right. Chris, you danced well.

The Vice-Chair: That's it? Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: You're right. One of your colleagues, Dave Murray, was with us in Walkerton yesterday. Thanks for coming again. You have brought the big cheese, Chris, with you today, so that's great. I say that to the Dairy Farmers of Ontario. They got it.

Let's finish up with Mr. Tabuns's point, since we have Chris here. We're getting conflicting recommendations about ultimately who should pay. Should it be the person drawing the water? Should it be the polluter-pay concept of fines and all that kind of stuff? Should it be the municipality, which represents the users, or their water rate, the people who are actually drinking that water that's coming from a common aquifer? Because we don't own it; we share it together, collectively. Or should it be from the province, representing the concept we heard that everybody was downstream? I'm just trying to get some idea, Chris, in your sense, where we would go on that, if you were to give us advice on that.

Mr. Attema: One of the most interesting take-home points that I've taken from the presentations to date has been—not just from agricultural stakeholder groups but from a wide range of presenters—municipalities, conservation authorities; the consistent and clear message is the call for provincial responsibility and involvement in upfront funding programs. Although we were somewhat encouraged by the minister's comments in Toronto with the discussion about the possibility of hardship funding for situations where the act could cause hardship, I don't think there has been overwhelming

endorsement of that as being the way to approach this. I think what we're hearing very clearly is the need for a proactive, preventive funding program to make sure that the issues and concerns that are being expressed across the table are being dealt with in an upfront manner.

Mr. Wilkinson: Mr. Chair, if I could just ask, on behalf of everyone, since we were dealing with the issue of—I know our researcher is looking at the question of expropriation without compensation. But in your presentation—and I'm sure Chris was helpful with that—there's a question about this other legal opinion that says that that's not the case. So if you could file that with the committee—the researcher is independent of us, so we have to rely on the people who are independent. But if you've got another way, I think it's important for us to be able to see that. If you could file that with us, that would be most helpful.

Mr. Attema: I'd be pleased to. The Ontario Farm Environmental Coalition legal counsel clearly has flagged subsection 88(6) as being problematic for our sector.

The Vice-Chair: I would recommend to send it to the clerk. The clerk will make sure all the members of the committee will get it. Thank you for your presentation.

I want to thank all the presenters today for excellent presentations and all the members for good debate and good questions. Also, to Hansard, the clerk, research and everyone, thank you very much.

We are adjourned until tomorrow at 9 o'clock. We'll be in Bath, Ontario.

The committee adjourned at 1234.

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**Standing committee on
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Clean Water Act, 2006

**Comité permanent de
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Thursday 24 August 2006

Jeudi 24 août 2006

The committee met at 0902 at St. John's Memorial Hall, Bath.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINTE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to Bath, Ontario. We have about 15 presentations this morning. We have a tight and busy schedule for this morning's session. Every presenter has 10 minutes to speak and five minutes for questions. The questions will be divided among the three parties. I would recommend and wish that all the presenters stick to the time because so many presenters after them will want to present their own cases and issues.

MOHAWKS OF THE BAY OF QUINTE

The Vice-Chair: We're going to start with Chief R. Donald Maracle of the Mohawks of the Bay of Quinte, if you're ready. The floor is yours. You can start when you are ready.

Chief R. Donald Maracle: First of all, I would like to say good morning to everybody, and I would like to welcome all of you to the traditional territory of the Iroquoian people.

I bring greetings from the Mohawks of the Bay of Quinte to the members of the committee and thank you for the opportunity to make a presentation on the proposed Bill 43, the Ontario Clean Water Act.

The Mohawks of the Bay of Quinte believe that protection of source water is paramount to ensuring public health and safety in any community. The Mohawk community is the fourth-largest First Nation in the province of Ontario and the sixth-largest in Canada, with a population of 7,600 people and 2,100 on-reserve residents. The Tyendinaga First Nation is located in eastern Ontario, along the north shores of the Bay of Quinte, south of Highway 401, approximately 20 kilometres east of Belleville. The Mohawk territory is bounded on the east by Deseronto and encompasses some 7,275 hectares of

land, with 20 kilometres of shoreline. There are approximately 925 homes in the community, of which 260 in the southeastern end are serviced with municipal water. The remaining 665 homes are serviced by individual wells, holding tanks and septic fields. The typical topography of the area is shallow overburden on fractured limestone, which creates high vulnerability of contamination to a relatively shallow drinking aquifer.

For decades, the Mohawks of the Bay of Quinte have been experiencing water quality and quantity issues throughout the entire community. In an effort to address these issues and at the request of Indian Affairs, we undertook a hydrogeological study and groundwater well assessment study. The hydrogeological and groundwater well assessment studies found the following:

—The majority of the 770 homes that were the subjects of the study were determined to be GUDI wells, which means “groundwater under the direct influence” of surface water streams.

—The majority of the existing wells are less than 6.25 metres, or 20.5 feet, deep, which is non-compliant with Ontario regulation 903. However, it should be noted that the only suitable, drinkable aquifer is found in this shallow subterranean. The deeper aquifer is salty and is untreatable.

—Twenty-five per cent of the wells constructed are too close to septic fields or other potential sources of contamination.

—Thirty-nine per cent of the dug wells have unsealed casings.

—Thirty-six per cent of the drilled wells have inaccessibility issues such as well casings in enclosed pits.

—Seventy-five per cent of the drilled wells have less than 40 centimetres of casing above the ground.

—Seventy-one per cent of the wells dug and drilled had foreign materials present such as animals, insects and plant debris.

—Water shortages are prevalent throughout the entire community.

—It will cost approximately \$9 million to address the well deficiencies, which is a serious public health and safety concern in our community.

In addition, the hydrogeological study found that there are 61 abandoned drilled wells and 52 dug wells in the community that require decommissioning. This represents an entry point for contamination to the groundwater. The government of Ontario should work in

partnership with First Nations to provide funding to close and cap these abandoned wells. Any provincial funding aimed at remedial measures in municipalities should also be made available to First Nations communities. In the absence of funding, many of these conditions will go unaddressed and will continue to present a risk to the water supply of the First Nation and surrounding communities.

In the past, there was a program available in the province, but there's always a question about eligibility of First Nations people to apply for these programs. As a result, the decommissioning money didn't come to any First Nations community.

Tyendinaga has routinely sampled the well water for bacteriological and *E. coli* contamination since 2001. Well water sampling statistics have found a consistently high coliform and *E. coli* contamination count in over 50% of the wells. The Mohawk council is concerned that the quality of the water presents a major public health and safety concern. It is becoming increasingly difficult to rely on groundwater for a safe supply of potable water.

In addition to the well issues, we also have sanitation issues with septic fields in the community and the lagoon servicing Quinte Mohawk School. The issues surrounding septic fields include early failure and many are constructed too close to wells. These problems prevail despite an inspection procedure by the Health Canada environment health officer. Quinte Mohawk School is a federal school, constructed in 1973, which is serviced by a number of wells and a sewage lagoon. The school has an enrolment of approximately 350 students. The school wells have gone dry in the past and the lagoon does not meet any provincial environmental standards.

A capacity evaluation study concluded:

—The lagoon is operating in the absence of a liner to protect the groundwater.

—There is no disinfection. Sometimes the discharge goes on top of the ground, creating a public health concern.

—There is a potential to increase phosphorous loading along the Bay of Quinte, contrary to the Bay of Quinte remedial action plan objectives.

—Ministry of the Environment officials have stated that a director's order would be issued if the lagoon was operated off-reserve.

Source Water Protection: As a First Nation, we are more susceptible to contamination of the water supply due to landfilling and heavy industrial, agricultural and commercial operations in the surrounding communities. For example, we are immediately downstream from the impacting influences of the Richmond landfill facility, which is currently seeking expansion approval from the Ministry of the Environment. The Richmond landfill site is located in the headwaters of the Marysville Creek, which traverses our community as it flows into the Bay of Quinte. The Ontario government review team recommended that the Richmond landfill expansion should not be approved since it is located in an area that is highly susceptible to groundwater contamination.

The Canadian Environmental Assessment Agency was unable to complete a transboundary contamination investigation since Waste Management Inc. failed to produce information that was requested.

The Ontario government should enact legislation to prevent landfill sites locating in areas where prevalent fractured bedrock and layered limestone exist. It is recognized that these geological conditions make the areas highly susceptible to contamination.

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Currently, Tyendinaga is working in partnership with the Quinte Conservation Authority, the Ministry of the Environment and Environment Canada to undertake a water source protection pilot project. The activities concentrate on ground and surface water sampling, identifying potential sources of contamination, public awareness workshops and database training.

There needs to be a holistic approach taken to water source protection, which is critically fundamental in ensuring safe drinking water for public consumption. There are a number of contaminated industrial sites in the adjacent municipalities that are no longer operating which may affect the Bay of Quinte watershed and require immediate remedial measures and action. There is a lack of accountability on the plan to remediate these contaminated sites.

There are a number of areas where enhanced funding is required to properly mitigate the issues. First, it must be recognized that the First Nations will require funding from both Canada and Ontario to conduct scientific studies to understand the watershed, to develop water quality databases and to remediate sources of contamination. This could also include filling in abandoned drilled and dug wells, collecting water samples for statistical analysis to document the surface and groundwater quality to develop better land use planning practices.

Second, First Nations lack the capacity to inspect well construction, water treatment systems and septic tanks. Funding for capacity development is crucial to ensure that First Nations have trained environmental inspectors to provide advisory and inspection services.

Third, there are overlapping constitutional, jurisdictional and treaty issues that require clarity to address the legislative capacity on matters related to drinking water standards, inspection and remediation orders. For example, there need to be regulatory standards for well and septic field contractors undertaking work on First Nations land. There is no regulation that applies and hence no enforcement to ensure that on-reserve well construction meets Ontario regulation 903 standards or septic field installations meet provincial standards.

Fourth, municipalities and First Nations will require funding from Ontario to remediate abandoned landfill sites. There are small sites in the surrounding municipalities that will require funding to ensure monitoring and proper closure.

In addition, the Mohawks of the Bay of Quinte have not been provided with any funding to be adequately consulted on Bill 43, the Ontario Clean Water Act.

Therefore, these comments are provided on a without-prejudice basis to any aboriginal treaty inherent or historical right that the Mohawks of the Bay of Quinte may wish to assert now or in the future.

The conclusion is that the former Prime Minister of Canada, Paul Martin, commented to the House of Commons about the shameful conditions under which First Nations live. The lack of potable drinking water in First Nations communities is shameful and a major public health and safety concern.

The governments of Ontario and Canada must work co-operatively on a government-to-government basis with First Nations governments to implement measures and programs that will improve the drinking water and protect the source water for First Nations communities.

The Vice-Chair: Thank you, Chief, for your presentation. You have five minutes for questions. We're going to start with Mr. Barrett.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): We appreciate the presentation—an excellent brief, here. I guess I have a couple of questions on the Richmond landfill. I was wondering how far away it is from your territory. I just wonder if you have any idea, with respect to other native communities across Ontario—I can think of a number of landfills here and there that seem to be awfully close to native communities. Sometimes, that's how that happens. I know down our way—I represent New Credit and Six Nations—the Tom Howe dump is right next to the New Credit reserve. I can think of a number of either existing landfills along the Grand River—Brantford for one, which is right by the side of the river—or proposed landfills. The Edwards landfill is about two miles from the Grand River, again proposed to receive Toronto garbage, given the potential for Toronto garbage to no longer be going to Michigan. I think of the Green Lane landfill outside of London, fairly close to the Oneida community down that way.

Have you seen any trends like this as far as location, either adjacent to communities or adjacent to significant watersheds or, in this case, as you've indicated, on top of limestone rock and there's a potential there for leachate to travel?

Chief Maracle: First of all, if the government of Ontario approves the expansion of the Richmond landfill site, the source water protection law will have no credibility with the public whatsoever. It's located in a—

Failure of sound system.

Chief Maracle: If the Ontario government passes Bill 43, there will be—shut it off and I'll just talk.

Failure of sound system.

Chief Maracle: —credibility with the Ontario clean water initiative. Everybody knows that the Richmond landfill site is in the headwater of a creek. It's contrary to Ontario policy to locate landfill sites in limestone areas. Where we're at in the process is that Waste Management is petitioning the minister to have a scoped environmental hearing before the Environmental Review Tribunal. I reiterate the Adams mine: The site was so poor that the government passed specific legislation to prevent

that from happening, and the same measures are required with the Richmond landfill site.

So there needs to be some pre-screening about landfill sites to make sure that if you're even going to think about putting a landfill site in an area, make sure there's lots of clay and some natural attenuation features. It makes no sense to put the public through the expense and anxiety when sending a message to the public that the Ontario government is considering approving landfill sites in areas that are not suitable. The environmental assessment process needs to be more responsible and accountable for good practices.

In terms of the question about landfill sites, we belong to the Association of Iroquois and Allied Indians, and I'm also familiar with Chief General from Six Nations. Just about every First Nation community is fighting some sort of landfill site because they have downstream impacts from the site.

Municipalities have responsibility for the waste that they generate. They can't simply ship it to somebody's backyard and have a political deal with the Ontario government to dump that garbage, and then it becomes an impacting environmental concern for another community.

There are a number of sites that are not suitable, and there needs to be an assessment done. It's high time now that Ontario implement other technology to dispose of garbage.

On whether or not the American border will close, that still remains a decision to be made in Washington. I think there needs to be a careful analysis done to see if it violates the provisions of the North American free trade agreement.

The Vice-Chair: Mr. Tabuns.

Mr. Peter Tabuns (Toronto-Danforth): Chief, thanks very much for coming in this morning and making that presentation. I understand the scope of the fight that your nation is engaged in to protect clean water in this area. If this act is adopted and funds are not made available to local authorities like yourselves, will you actually be able to take action to protect the quality of the groundwater in your community?

Chief Maracle: I suppose if the Ontario government doesn't want to follow the law regarding public obligation, then one of the considerations will be to take the Ontario government to court to make the government follow the law. Waste Management is trying to sidestep the obligation of public consultation which the Environmental Assessment Act requires. The government should never entertain that kind of abuse of the public. That is what's happening right now, and the people who sit at those desks in Queen's Park have an obligation and duty to the public to make sure that that doesn't happen. So we now call upon the government to look into this matter and to make certain that there's public obligation and that, if it's a bad idea, kill it.

With regard to the Richmond landfill site, the government should be responsible and accountable and should simply say no, because it's in a poor location, and not refer it to an Environmental Review Tribunal hearing.

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The Vice-Chair: Parliamentary assistant from the Ministry of the Environment, Mr. Wilkinson.

Mr. John Wilkinson (Perth-Middlesex): It's good to see you again, Chief. It's always nice to be in the Bay of Quinte. As a boy who was raised in Trenton and went to high school in Belleville, it's always good to be close to home.

I'll definitely ensure that your comments are passed along to the minister. But since I have you here, and just specifically on the Clean Water Act, I just want to get your sense, and you have compelling testimony about how we're all drawing the same drinking water. The idea of the bill is to get the people who are drawing from the same source, whether it's the Great Lakes or surface water or the aquifer, together and they plan together as a community to keep that water safe at the source. I know that there are jurisdictional issues that we have to deal with, but I get a sense, then, that as long as we can come to a mutually respectful agreement—would it be right to say that you would be interested in being part of this process with everybody else who's in the same watershed? Is there a problem from a jurisdictional point of view? O'Connor was telling us, you know, it's obviously voluntary on behalf of First Nations, but they should feel welcome to be part of that process. So what do we need to do to make sure that can happen? The people here are all drawing from the same—

Chief Maracle: First of all, it's not an issue of political will. There is a constitutional obligation to consult and for us to represent our own views before a government on a government-to-government basis. That's what the treaty relationship calls for.

Mr. Wilkinson: Right.

Chief Maracle: So it's not really a political decision, but usually what happens is that when there is funding to remediate something, the provincial government has always used the convenient excuse that it's somebody else's jurisdiction and somebody else's problem.

The law does not prevent Ontario from helping or assisting First Nations communities. As a matter of fact, I think most of the land that all these municipalities and towns have been built on throughout Ontario and all the resources—I mean, that still is a very serious, unsettled issue between the native people and the crown. There are issues about whether there were surrenders, whether there were proper treaty accommodations, whether or not the crown even fulfilled their obligations under those treaties to First Nations people. So if you're looking at an initiative to protect public health, it's absolutely imperative that everybody co-operate in the measures that are being implemented, and that includes the Ontario government.

The Vice-Chair: Thank you, Chief. Thank you very much for the presentation.

SCOTT REID

The Vice-Chair: The second presentation will be by Scott Reid, M.P. for Lanark-Frontenac-Lennox &

Addington. Welcome, sir. You can start when you're ready. As has been mentioned, you have 10 minutes.

Mr. Scott Reid: Thanks very much.

The Vice-Chair: I believe you are familiar with the procedure.

Mr. Reid: Yes, I am. As a member of Parliament, I get to sit on committees, and I've actually been a witness before a provincial legislative committee and also before federal committees, so I'm sure it's the same procedure as usual.

First of all, let me welcome you to Bath, which is in the federal riding of Lanark-Frontenac-Lennox & Addington, and to say that I hope you've enjoyed your overnight stay. I'm told you were in Milhaven last night. An overnight stay in Milhaven: I've stayed at the same inn you're at and it can be very enjoyable, especially if you get a chance to get out and look over the lake in the morning.

I'm here to talk today, and I hope you've all now received a copy of the presentation I'm making, about a proposed amendment to the Clean Water Act that would allow for greater respect for the rights of property owners. I'll simply read to you from the presentation that I have and then I'll take your questions.

Protecting our water supply from dangerous pollutants is clearly a noble goal and one of great importance to residents across Ontario. In the pursuit of the same, however, the Clean Water Act as it is currently worded places significant and, I believe, unnecessary burdens on rural Ontario's property owners. I've been an advocate since long before I was elected in 2000 for a moderate, practical version of property rights, which I believe to be entirely in keeping with the practical and just nature of the society that we enjoy here in rural Ontario and, by extension, across the entire country.

The Clean Water Act can easily be amended, I believe, to accommodate this version of property rights. Today I will suggest such an amendment to the bill. The right of property, as I understand it, is the right to access the full value of that property and the right to full compensation for this value in the event the property is expropriated or its full value diminished as a result of public policies which place restrictions on the use or enjoyment of that property. Therefore, property rights ought not to be entrenched in the law in such a manner as to restrict the government's ability to pursue any project whatever that the Legislature has judged to be in the public interest, including projects that have the effect of diminishing the value of private ownership of a given object or property.

On the other hand—and this is relevant in the context of the Clean Water Act—it is the general public and not an unfortunate few who should bear the costs of all worthwhile social goals, including the worthwhile goal of source water protection. This cost should be borne through the general tax system, to the extent that it is necessary to draw upon the general revenues of the province in order to compensate property owners for payments made in compensation for losses to the value of

their property as a consequence of the application of the Clean Water Act or of its regulations.

I could discuss at length a number of serious concerns that I have regarding the enforcement process outlined in the act. It's particularly alarming, for example, to read section 54, which grants inspectors the right to enter property and remove virtually any evidence they desire, with no warrant and without the consent of the owner.

The enforcement powers detailed in section 55 effectively grant inspectors the ability to shut down any existing practice in which a landowner may be engaged.

Section 56 states that a permit inspector—and I quote the act—"may cause to be done any thing required" by these enforcement orders, even before landowners have had the opportunity to comply with such an order. An inspector needs only to be of the opinion that a farmer will not comply with an order, competently or promptly, to seize that farmer's livestock or seal off his fields. These measures all have the effect of providing for unnecessary confiscation and coercion, rather than encouraging co-operation and reasonable compliance.

While these and other measures of the proposed Clean Water Act are deeply concerning, I believe that these matters could largely be addressed by ensuring that landowners are provided with full, just and timely compensation for any losses incurred as a result of the act's enforcement.

As currently worded, the bill specifically states in section 88 that landowners shall receive no form of compensation for damages resulting from the act, including the loss of the value of property, which is defined as "injurious affectation" under the Expropriations Act. The bill includes a provision prohibiting compensation derived by means of contract or tort decisions. The result of this is that the full costs of any measures imposed by the act on a landowner, including potentially devastating prohibitions on property use, are to be borne solely by that landowner, even when the costs were largely avoidable or when they have been imposed without reason or justification.

I believe that the problems I have outlined above could be overcome if the following amendment were added to the wording of the bill. The amendment that I propose would ensure that landowners receive fair compensation in the event that compliance measures impose burdensome costs. The amendment reads as follows:

Section 88 is replaced with the following: "All persons who incur damages as a result of this act and its regulations, including an expropriation and/or injurious affectation, are eligible to receive full, just and timely compensation in accordance with the Expropriations Act."

The existing provisions of the Expropriations Act ensure a reasonable, detailed process to provide compensation in those legitimate cases in which an individual has willingly or unwillingly undertaken a substantial financial sacrifice for the public good. I do not think that anyone would argue that better source water is not a worthwhile social goal. So let's try to ensure that society

as a whole is responsible for bearing the costs of achieving this goal.

Thank you.

The Vice-Chair: Thank you, Mr. Reid, for your presentation. Now we can open the floor for questions. We're going to start with Mr. Tabuns for the first question.

Mr. Tabuns: Mr. Reid, thank you very much for that presentation, and also for your help with the protection of Mitchell Creek near Desert Lake. A local there told me you've been very supportive.

Mr. Reid: We haven't quite resolved that one yet.

Mr. Tabuns: I understand that.

Mr. Reid: But we'd like to.

Mr. Tabuns: Which is great.

With this whole approach to protection of property owners by ensuring that the costs to protect groundwater are covered by society as a whole, would you say that you support the direction of this bill?

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Mr. Reid: Do I support improving the protection of groundwater? As a general principle, the answer is yes. I don't have the technical expertise—for example, I lack knowledge of geology and a number of the issues that would be relevant to this—to say whether this is the right general direction to go, the specific things that are being done. I haven't done the right kind of research, for example, to comment on whether the kinds of source water protection boards that are being created—I'm not using the right term, but you know what I mean—are necessarily the right way or the wrong way of going about it. One could go on and on in that vein, but I guess the general question can be answered by the statement I made at the very beginning, in which I described this as a noble goal. The goal itself is entirely appropriate.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in to see us today. Three quick things, just issues of clarity, because we've been dealing with this, and I want to ask you a question in your new role as part of the government.

The minister indicated on Monday that we're looking at amending the bill from the whole idea of a permit official to one of risk management to ensure that we consult with people first, and that the carrot is a lot bigger than the stick, although we do agree that if there is an imminent, significant threat to the drinking water from which everyone is drawing, sometimes in those extreme cases we do have to have the power to be able to make sure that our water is not being contaminated.

There had been some question about expropriation without compensation. A review of the bill shows that there is no expropriation without compensation in the bill. You have to read the bill in total. If you just pull out some sections, it causes a problem.

My question is about our relationship with the federal government. We're in the process of renegotiating the Canada-Ontario agreement in regard to the Great Lakes. There have been a lot of issues raised about the cost of this bill. I'm just wondering, in your sense as a member of the federal government, do you see that source

water—which I think is going to be a big issue here in Ontario—is something that should be on the table for negotiation between our two levels of government to ensure that there are adequate resources to make sure that we can deal with the issues as they're uncovered by the community as they look to mitigate any significant threats to their drinking water?

Mr. Reid: I would imagine that there may be a federal role if any boundary waters are affected.

Mr. Wilkinson: Like the Great Lakes.

Mr. Reid: That's right. To that extent, I suspect, although I don't know, that our treaty obligations might require a federal role. As I say this, I should offer up the fact that I'm not an expert in that area either. To the extent that fisheries is affected—there is, of course, a continuing Great Lakes fisheries; a little bit in Lake Ontario, more so in Lake Erie—there would probably be a federal role because, again, fisheries is under federal jurisdiction. Constitutionally, with the exception of aboriginal lands and military bases, the responsibility would be under the province, but I certainly think that a co-operative approach is always the best one.

I do want to talk a little bit about expropriation without compensation, because you raised it in your comment. The bill doesn't talk about expropriation in that sense. Expropriation, when it involves taking the title to land, is very well covered in Ontario. That's why I made reference to the Expropriations Act, which is a fine piece of legislation. The problem is the removal of the use from property owners. You noticed I used farmers as my example, but there are other examples: campground owners, people who run sawmills and so on. What tends to happen under provincial legislation—this has been the pattern for the past few years—is that what I would phrase as the use and enjoyment of property or effectively part of the value of property is taken away from that property. Property ought not to be understood as merely title but as the bundle of rights and obligations associated with an object of value; typically, a piece of land.

When you leave someone with the title but you say, for example, "You have to have a setback on your land. You can no longer allow your cattle to graze within a certain distance of the water, and you have to put up the fence at your own expense to keep them out," you're effectively expropriating some of the value. Just two days ago, I was talking to a farmer from this district who told me that he'd lost about 10% of the use of his land because of a setback; no compensation. That's the kind of thing that concerns me. It has happened under other pieces of provincial legislation; federal legislation too. All I'm saying here is that by putting the wording I've suggested into section 88 of the act, that particular kind of expropriation of partial value, of the use and enjoyment of property without compensation, would be ended, and the excellent provisions of the Expropriations Act would come into effect with regard to this piece of legislation.

The Vice-Chair: Thank you very much. Mr. Barrett?

Mr. Barrett: Thank you, MP Reid. Your work on property rights is well known. As you've indicated, the Expropriations Act does require compensation if land is taken. Again, how do you define a taking with this particular piece of legislation? I may be disagreeing with Mr. Wilkinson. We do have an opinion from research with respect to section 83 of this legislation and its impact on compensation. However, you're referring to section 88. I refer specifically to subsection 88(6), where nothing done in compliance with the Clean Water Act can be considered an expropriation. Again, this means, in my view, that regulations, designations, are not considered as expropriation. So if it's not an expropriation, well, you don't get any compensation, to the point of, say, lack of enjoyment of that property, to use that term.

So we are concerned about backdoor expropriation. We have received a research opinion on section 83. We're waiting for an opinion on section 88. Just based on your presentation, we may ask research to do a bit more work on this other form of taking, the taking of enjoyment or the taking through putting a restriction on your land. They don't buy it from you, they don't lease it, but they put a restriction on it and, essentially, the value of that land has been diminished without any compensation.

Any further comment on that?

Mr. Reid: Actually, maybe I can. The way one establishes a value typically under an Expropriations Act—most of the provincial Expropriations Acts, and the federal one as well, follow fairly closely a single model. What they say is that you would determine the value by looking at what a willing buyer and a willing vendor would have achieved as a reasonable price prior to the particular restriction coming into effect. So if that's affected, then a restriction on land use is something of value; the value can actually be assigned in a dollar figure and paid out.

When restrictions are placed that don't have the effect of affecting value, then there's no need for limitations on this. I think sometimes people imagine that when you provide for this kind of compensation, you're going to hamstring government or make the costs of reasonable measures impossible for government to bear. That's not the case. It's really when existing practices are affected that you find that compensation is necessary.

I also must say that in general, when governments are faced with the obligation of actually costing out what the measures are going to be, the tendency is that they come back and put the research in, the bureaucrats put the research in, to make sure that they find the lowest-cost solution. We've seen with some of the previous acts that have been passed—I would cite the Nutrient Management Act as an example—that there was a lack of that kind of thought as to what is the lowest-cost solution, because the costs were off the books with the government, so that it wasn't necessary for the public servants who were designing the regulations to think them through, as they would have to if those were costs that would be coming out of the budget and therefore would be competing with all the other worthwhile goals that the government had in mind.

The Vice-Chair: Thank you very much, Mr. Reid, for your presentation.

Mr. Barrett: On a point of order, Mr. Chair: I indicated I did have a question for research. We have received the report on section 83. I think it was yesterday that we asked for a determination on subsection 88(6), whether this legislation does provide compensation for the value of property that's expropriated. But further to that and based on MP Reid's presentation, I have I guess a third request now to research on this expropriation. The request is, does this Clean Water Act provide compensation if full value of property is diminished as a result of public policies which place restrictions on the use or enjoyment of the property? That distinction is not, say, a lease or a sale or a physical taking. But as Mr. Reid has explained, and I've used his phrase on page 1, if we can determine if this legislation does—

The Vice-Chair: Sure. Research will look into it and provide every member of the committee with a copy.

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Mr. Wilkinson: I thank the member for asking for that. Since research is working on it and since MP Reid brought this up, I would commend to research to look at the question of the Nutrient Management Act that was brought in by another government and the question of the creation of, I think, 15-metre buffer strips on either side of a watercourse and whether or not that act made provision for that—the necessity to put up fencing to prevent cattle from being in a waterway, that type of stuff. I'd be interested to see that. Historically, we'd ask you to look at that as well, because MP Reid brought that up and that would, I think, be quite informative.

Mr. Barrett: I would concur with that, because this legislation supersedes the Nutrient Management Act.

The Vice-Chair: I want to remind all members that the research department is going to summarize all the points and is also going to clarify any points for everyone.

Thank you very much.

LEEDS AND GRENVILLE LANDOWNERS ASSOCIATION

The Vice-Chair: The next presentation will be by the Leeds and Grenville Landowners Association. If they are here, they can come forward for their presentation. Welcome. You can start when you're ready.

Ms. Jacqueline Fennell: Thank you very much for the opportunity to speak with you folks today. I'm Jacqueline Fennell. I represent the Leeds and Grenville Landowners Association. I'm also speaking on behalf of the Prince Edward-Hastings-Northumberland Landowners Association.

It seems very interesting to me that we're here today talking about clean water as, when the landowners' associations in Leeds and Grenville first began, a very big concern in rural Leeds and Grenville and rural Ontario was what our government was going to be doing to monitor water or to ensure water safety. Of course,

everyone was concerned that there were going to be meters put on our wells and all sorts of things. Here today we're talking about something that is much more intrusive and much worse than a meter on a well could ever have been. So I congratulate you on being able to surpass the terrible thoughts that we had, because you've done a wonderful job of making things much worse in rural Ontario.

Speaking about drinking water and its protection, of course we do want everyone to have clean water; we're not in any way against that. But what the Clean Water Act, Bill 43, is doing is targeting rural Ontario individual property owners, creating a whole new bureaucracy of people who are going to be permit officials who are going to be coming on to our property whether we like it or not, possibly excavating and changing the layout of our property—all sorts of things like that. We somehow are being seen by the folks in the city as the problem, when I have statistics here where the top eight polluters are all cities.

These are 2003 statistics. It's very interesting that we're here near Kingston, because Kingston is on here a few times. Here in Eastern Ontario, we hear all the time about Kingston bypassing its waste systems and putting its waste into Lake Ontario, which subsequently comes down the St. Lawrence River. Anyway, I'll go through this list. We have Ravensview waste water treatment, city of Kingston; Lakeview water pollution control plant—the company name is the Ontario Clean Water Agency; waste water treatment plant, city of Cornwall; Clarkson water pollution control plant, Ontario Clean Water Agency; east end water pollution control plant, city of Sault Ste. Marie; Kingston West water pollution control plant, city of Kingston; west end water pollution control plant; Sault Ste. Marie waste water treatment plant; city of Cornwall landfill site, city of Cornwall.

Something rings true here, that the people in the rural areas are not the problem; the people in the cities are. The Clean Water Act is all about attacking people in the country and making us responsible for the problems of the cities, and that is only creating anger and detest for, unfortunately, most of yourselves as well as the people in the cities, because it is creating a divide between the country and the city. This Clean Water Act, Bill 43, is only helping to make that happen.

I would suggest that you already have legislation to keep our water clean, if you would only use the legislation you have: a section of the Environmental Protection Act, which clearly protects all water in Ontario. In essence, there is no greater protection for the environment than what is already legislated in the Environmental Protection Act.

Section 14 states, "Despite any other provision of this act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect."

The definition of a contaminant in the EPA is as follows:

“‘contaminant’ means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that ... may cause an adverse effect....”

The partial definition of an adverse effect in the EPA is as follows:

“‘adverse effect’ means one or more of,...

“(c) harm or material discomfort to any person,

“(d) an adverse effect on the health of any person,

“(e) impairment of the safety of any person,...

“(g) loss of enjoyment of normal use of property, and

“(h) interference with the normal conduct of business....”

Bill 43 is nothing more than something to pass your time and make you all feel like you’re doing something good when you could just use the legislation that you already have and enforce it. So I would suggest to you that rural Ontario and the landowners’ associations all over Ontario are not going to abide by Bill 43—you’ve already heard this—in its current state. I understand that these hearings are supposed to make everyone feel all warm and fuzzy, that you are asking for everyone’s input, but I do have a copy of a report marked “Confidential” that was just recently circulated amongst bureaucrats or politicians—I’m not exactly sure. But if this is completely open and honest with everyone, we wouldn’t have confidential reports circulating.

I’ve probably not taken my full 10 minutes, but I think I’ve said all I have to say. That is why there is no handout for you, simply because it is not acceptable and we will not tolerate Bill 43.

The Vice-Chair: Thank you, Ms. Fennell, for your presentation. We open the floor for questions. We’ll start with Mr. Wilkinson.

Mr. Wilkinson: Thanks, Jacqueline, for coming in. We’ve been going across the process. Where we are of course is—the bill is introduced, and then, after it has been debated by the whole House at second reading and before we amend the bill or look at any amendments from any of the three parties, we actually go out and have public hearings. That’s what we’re doing right now. You have that whole process that creates a bill, and then you have to get out and talk to the people. So that’s what this process is. It’s all about democracy and making sure that this is transparent.

Remember O. Reg. 170. I know there are concerns about that, and we’ve done a lot of work since we’ve formed government to deal with that. If you try to have this one-size-fits-all approach for the whole province in regard to water, you end up having it not fair. So what Justice O’Connor was telling us about was, you want to get the people together who drink the same water from the same source, whether it’s the Great Lakes or the aquifer or a river, because they all have a common interest, and get them to work together to figure out where they’re getting their water, make sure it’s not being wasted—know how much is coming in, how much is going out—and then try to figure out whether there are

any places where you have to be really, really careful to make sure that you’re not tainting that water.

I’m from a very rural riding. Everybody knows you don’t taint your well and you don’t taint your neighbour’s well. So you have to know where those significant spots are. Then together as a community, the idea is to make sure that they are protected, because it’s cheaper to keep the water clean in the first place than have to do all that treatment or, heaven forbid, get the water contaminated.

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The issue was about the authority of the government, if there was a significant threat. One of the amendments the minister was talking about was, “Well, we have to go to a risk-based.” Whether it’s a farm or whatever, you go out and try to figure out what’s the best way of working co-operatively to make sure that that threat to the common drinking water is getting reduced. I know you’ve been hearing different things about the bill, but that’s kind of the intention of it, so I don’t see the imposition of that as being unreasonable, if the people who are sharing the water together are the ones who are coming up with the plan to keep it safe.

Ms. Fennell: I thank you for your question. I find it interesting that we go back to the rural folks.

Mr. Wilkinson: Actually, it’s all of Ontario; it’s just not rural.

Ms. Fennell: Let me just finish my comment. I appreciate that it’s all of Ontario, but the focus seems to always be on the rural side of things: we don’t want to pollute our wells, we don’t want to have our septic systems not working properly etc. As I said, the city of Kingston, the city of Cornwall, the city of Toronto, all along the Great Lakes—and I’m sure there are others but I, unfortunately, just know more about this area—are constantly polluting and they’re affecting more people than if, for instance, I were to pollute my well. That would affect five people. If I had some people over, it might affect 10. When the city of Kingston dumps hundreds of thousands of litres or whatever you would call it of waste into the St. Lawrence River, that affects the drinking water of every single city from Kingston south. They’re affecting a lot more people than me or you in the rural area. We would never harm our own wells. Why would we do that to ourselves? The city of Kingston doesn’t care because it doesn’t affect them. It goes on down, and the people on Wolfe Island and the people in Brockville or wherever it might be have the effects of that.

My suggestion to you is, when you fix the problems of the cities, which are much bigger and which affect many more people—because of course the city people always want everyone to know that they are more populous, there are more people there, they have more votes—then you come and you maybe will ask us to fix ours. We don’t even have a problem. But anyway, we’ll work with you to go that way. But when you fix the problem in the cities, because they do affect most of the people, that is where your efforts should be attended to. How many hundreds of thousands of dollars—or millions, prob-

ably—are you going to spend on permit inspectors to come around the countryside and check on wells? I can guarantee you won't do anything to Kingston, Cornwall or any of these places because you authorize them, with permits, to dump their sewage into those rivers. So don't come to the people and tell us there's a problem with our water when you are authorizing cities to dump their waste into the waterways.

The Vice-Chair: Ms. Scott.

Ms. Laurie Scott (Haliburton–Victoria–Brock): Thank you very much for your presentation; very impassioned. I think you've really described what we're hearing: the anger in rural Ontario. We're all for clean water, but it's the way it's being presented. It's confrontational. It has built up the anger in the community. We don't know for sure what it says; definitions are vague. I'm just trying to clarify for the government that Jackie speaks really well about what's going out there. We're going to have confrontations. They're not going to comply. We're all in this together. The agricultural community, the rural landowners, have done nutrient management plans; they've done environmental farm plans. They've done a lot. They are good stewards of the environment.

There is existing legislation—we had this discussion earlier and Jackie has brought it up again—within the EPA, within the Ontario Water Resources Act, to do this without bringing in another piece of legislation. “Legislative fatigue” is what we heard from municipalities.

Jackie, do you think there's any hope that we can make a lot of amendments that need to be made to this bill or do you think the government should go back to the drawing board on Bill 43?

Ms. Fennell: It is a very long bill so I have to honestly say that I haven't read the whole thing. I said before, and like you just reiterated, there already is legislation to protect the water. I think this is just an exercise in creating jobs and something for everyone to do. It's unfortunate, but that is the way this appears. A lot of people don't even know about the existing acts that are there. If that came to light to everyone, this would seem even more redundant, I think.

I'm all for clean water. I'm not against that. Rural people are not against clean water, and it's not that we're angry because, gosh, we don't want to make the water clean. We're not making it dirty to begin with. We own the property. It is in our best interests to keep that property at its best, whether it be farmland or whether it be my house, my lot, my well, my septic. It's not that we're angry with the idea of clean water; we're angry with the idea that we're the ones who are being focused on when the cities are the ones that are being the polluters.

Ms. Scott: Thank you very much.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Jackie, thanks for your presentation today. I appreciate you taking the time. I had an opportunity last night to meet with some of the folks in Tyendinaga township about their concerns with the Richmond landfill and the destruction of their ground-

water, with the leachate coming out from that dump. So I would assume that you would support strong environmental action to protect rural groundwater from landfills and other such operations.

Ms. Fennell: Yes. I know they're having the same issue back in Ottawa with the Carp landfill. No one wants to live beside a dump, I guess, or for a dump to get bigger. That's a whole different issue, I think, once you get on to landfill because—wow.

Mr. Tabuns: No, I think it's in here.

Ms. Fennell: Okay. We obviously need a landfill but no one wants to have their property affected by that, and I know the Chief was speaking about that earlier. I think if you go after the big polluters, the big corporations, the big cities, this is where your problem is. Just leave the rural individuals, farmers—leave everybody alone because we're not the ones who are creating the problem.

The Vice-Chair: Thank you, Jackie, for your presentation.

CATARAQUI REGION CONSERVATION AUTHORITY

The Vice-Chair: The next presentation will be by Cataraqui Region Conservation Authority.

Welcome to the standing committee on social policy. You can start whenever you're ready.

Mr. Steve Knechtel: Thank you and good morning. Thank you for the opportunity to be here. My name is Steve Knechtel. I'm the general manager and secretary-treasurer of the Cataraqui Region Conservation Authority. Sometimes during the presentation I'll refer to this as the CRCA or the Cataraqui area.

Also, I should take this opportunity, before I forget, to welcome you to our jurisdiction, which extends from Napanee on the west, along Lake Ontario, past Bath to Kingston and along the St. Lawrence to Brockville and then north to Newboro on the Rideau Canal, which is the break point between the waters flowing to Lake Ontario and the St. Lawrence and those northerly to the Ottawa River.

With me is Rob McRae, who is the source water protection project manager with our conservation authority.

On Tuesday you heard a submission from Conservation Ontario, which represents the 36 conservation authorities across the province. The CRCA supports the comments made by Conservation Ontario. Our purpose today is to demonstrate local support for source water protection planning and to suggest some revisions to the proposed Clean Water Act.

We have distributed a handout summarizing our presentation; I think it's blue-coloured. A written submission that proposes specific changes to the text of the act will be sent later.

I'd like to talk about a watershed-based approach. Source water protection needs to be done in a more watershed-based approach than that which is currently proposed in the Clean Water Act. Additionally, the act focuses on protecting water for municipal drinking water

systems and on the use of regulatory implementation tools. We suggest that this focus is too narrow. There's also a need to consider non-municipal water supplies and the use of implementation tools such as research, education and stewardship programs.

First, I'd like to talk a little bit about watershed-based plans. The provincial government has endorsed a broad-based approach to water management. In 1993, the province stated that a fragmented approach is "difficult, costly, and not particularly effective," and in 2005, that the watershed is "the ecologically meaningful scale for planning." We agree with that.

Groundwater, surface water, land use and land management practices are all connected and they all affect the health of a watershed. What occurs upstream affects what happens downstream.

Our preliminary source protection work over the past couple of years suggests that there are major risks to drinking water that fall outside of the vulnerable areas identified in Bill 43. As well, the source for municipal drinking water supplies on the Great Lakes system, which supplies a large population of the province, is influenced by activities far upstream of intake protection zones. It is essential, therefore, that we prepare source protection plans for watersheds.

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With respect to non-municipal drinking water supplies, about one in five residents in the Cataraqui area relies upon non-municipal drinking water. This includes surface intakes and wells that supply drinking water for schools, libraries, community centres and homes outside of serviced areas. The source of this drinking water is almost always a shared resource, be it an aquifer, a lake or a stream. Source water protection is the only component of a multi-barrier approach that can ensure protection of this water, especially where it is heavily used or vulnerable to contamination. As others have stated, everyone in the province has the right to safe, clean drinking water. We believe that it is therefore critical that non-municipal drinking water supplies be included within the Clean Water Act.

A provincial technical experts committee concluded: "Large municipal systems may not be the most urgent priority for implementing the primary barrier of source protection.... By contrast, private rural wells had an unacceptable frequency of microbiological contamination."

It is important to determine the true condition of drinking water in Ontario and for the community to develop sound and practical long-term solutions.

A little bit about implementation tools: In order for source protection to be successful in Ontario, we will need to use a full suite of implementation tools, both voluntary and regulatory. The proposed act already provides for regulatory tools such as permits and zoning. It needs to also include voluntary tools, such as education programs and stewardship. Each source water protection plan should make use of the full range of options available.

We know from experience that the carrot approach is often more successful than the stick approach. Conser-

vation authorities have been very successful with our watershed stewardship initiatives. For example, we deliver programs that provide education, financial help and technical advice to landowners who are looking to improve conditions along streams on their property. The landowner we help with planting a stream bank buffer makes an improvement to water quality for all landowners along the stream—as well, it benefits their own property—and learns something about the environment.

Long-term and sustainable funding: Long-term and sustainable funding is required to support plan implementation. However, we believe it will save money in the long term.

Source water protection is a preventive approach that avoids the high costs of cleaning up contamination or finding new sources of water. There will be some implementation costs. They will vary depending on the findings of each source protection plan. Some of this can be done or addressed by using and strengthening existing programs, rather than creating new ones. The costs will need to be shared in a fair and open manner.

The province has a track record of contributing funds for initiatives with broad public benefits, whether they are for research, planning, stewardship or monitoring. Continued and enhanced funding is needed, especially for municipalities and others that have few mechanisms to generate funds on their own.

We support Conservation Ontario's idea of a stewardship fund, administered provincially, that could be used to implement voluntary tools. The Clean Water Act needs to reflect the role of the province in supporting implementation activities.

I'd like to provide some closing remarks. We support the proposed role for conservation authorities as coordinators of source water protection planning, monitoring and reporting. This is a natural extension of our watershed management work.

The CRCA has over 40 years of experience dealing with local communities to plan for natural resources on a watershed basis. We have established working relationships with individual landowners, municipalities and stakeholder groups, and we have the technical and communications skills that will be needed to successfully coordinate this program. We believe that source water protection is important for watershed management in Ontario and has clear benefits for our economy, society and the natural environment.

The standing committee, from our perspective, needs to consider a watershed-based approach to source water protection, one that would include non-municipal supplies of drinking water and a full range of implementation tools. We are optimistic that the Clean Water Act will receive third reading during the next session and that the provincial government will commit long-term and sustainable funding for the program.

Conservation authorities support the general intent of the Clean Water Act. We are proud to be involved with this program and look forward to continued work with our community partners to protect drinking water. Clean

and plentiful water is essential for the province of Ontario.

Thank you for the opportunity to make this presentation.

The Vice-Chair: Thank you, Mr. Knechtel, for your presentation. We move now to the question period. We'll start with Ms. Scott.

Ms. Scott: Thank you very much for your presentation. You've hit a lot of points that we've heard throughout the week. The source water protection: You've highlighted that it should be a provincial responsibility. You mentioned stewardship funds. We all agree with that.

If you don't see any of these amendments come through, do you think we are actually going to accomplish anything with Bill 43, the Clean Water Act, as it stands right now? Because the present government is downloading it onto the municipalities and the land-owners, and they can't pay for it. I just wanted your comment on what amendments you'd like to see where this bill would actually accomplish its goal of source water protection.

Mr. Knechtel: I think, as mentioned previously, there are a number of existing programs that are being used today, and I suspect that they would continue. So we are working toward source water protection. I think what we need, though, is some input to allow us to do a better job of what's being done.

I won't get into the discussion of existing funding. Conservation authorities are already discussing with the province what we feel is underfunding of our existing programs.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Yes, Mr. Chair. I have a question and then I have a request for research. With your permission, I'll ask my question and then go to the research.

The Vice-Chair: Sure.

Mr. Tabuns: This question of funding: You mentioned just this second that you are already dealing with a problem of underfunding of your existing activities. If this bill is adopted as written and there's no provision for funding, will you actually physically be able to undertake the tasks which you have been assigned, or will be assigned?

Mr. Knechtel: It would be extremely difficult. If we were to put a priority on source water protection, it would undermine some of our other programs—basically paying Peter and robbing Paul to do it.

Mr. Tabuns: Which is something I always oppose.

The Vice-Chair: Mr. Wilkinson.

Mr. Wilkinson: This is when I wish my name was Paul, because it would have been a great moment. Ah, the dilemma of government.

Steve, thanks for coming in and for the good work the conservation authority is doing. No one understands the carrots better than conservation authorities. To think that over half a century ago we decided that we wanted to make sure that we couldn't just have all of these floods happening, and we had to come together as a community

and control the flow of water so that everyone in that watershed could be safe.

My question has to do with the non-municipal private wells. We've had some testimony that—of course, a municipality may say that there's a system that they'd like to have included. There's some testimony that says that the minister should have power to be able to designate clusters; for example, if there was a nursing home or a school. Can you give us some idea, in your own sense, about what would be the criteria that would be used to ensure that if there's a vulnerable population, really, they should be part of that plan?

Mr. Knechtel: I would say that we haven't necessarily looked at the detail of some sort of criteria. Our initial response is to look at where there's a concentration of use as an initial start-up. But we haven't really looked at it in any particular detail beyond that.

Mr. Wilkinson: You do a septic inspection program now; is that correct?

Mr. Knechtel: Our conservation authority is not involved in septic system approvals. The municipalities within our jurisdiction have retained other services. We are not really involved in doing reinspection work either. We're certainly aware of some going on in our jurisdiction. Again, it's being done by others.

The Vice-Chair: Thank you very much for your presentation, Mr. Knechtel.

AGRICULTURE GROUPS CONCERNED ABOUT RESOURCES AND THE ENVIRONMENT

The Vice-Chair: The next presentation would be by the Agriculture Groups Concerned About Resources and the Environment. I believe, sir, you are familiar with the procedure. You have 10 minutes to speak and present your paper, and you have five minutes for questions.

Mr. Max Kaiser: Thank you. On the agenda, we're listed as Agriculture Groups Concerned About Resources and the Environment. We typically refer to ourselves as AGCare, so during the discussion I may refer to us as AGCare. We're also one of the four founding members of OFEC and on the steering committee for this issue as well.

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My name is Max Kaiser. I live nearby in this county. I'm a farmer and egg producer. I'm joined by Dave Armitage, who is a senior research official with the Ontario Federation of Agriculture. He's also a technical representative to OFEC.

I'm here today representing AGCare. As I said, we are a coalition of farm organizations focused on providing science and research-based information as well as policy initiatives on environmental issues affecting field and horticultural crop production in Ontario. Water quality is certainly one of these issues. We welcome the opportunity to be here today, as much as I welcome you here to my county, to present our comments on the proposed Clean Water Act to this committee.

Farmers naturally understand the importance of drinking water and protecting drinking water. Our families drink the water that comes from our land through our own wells. In fact, I believe farmers to be the first environmentalists, as we've been stewards of the land for 10,000 years.

AGCare believes that protecting drinking water is a shared responsibility and that farmers need to be treated fairly under this legislation. We should not be left shouldering most of the responsibility and costs.

The committee was given copies of OFEC's statement earlier in the week, and I'll refer to that. I didn't bring copies here today, which I'll blame on Purolator Courier first. Anyway, I'll skip through some of the points. I know some of them were covered at length in other sessions, and I won't dwell too much on some of them.

The first issue, of course, is the purpose statement. I'll reiterate the fact that we're very concerned about the lack of focus that exists in that purpose statement. It could be interpreted to mean all water everywhere instead of focusing on the protection of municipal drinking water supplies. We support, of course, the suggestions put forward by the Ontario Farm Environmental Coalition that emphasize water sources requiring protection and see the Clean Water Act as another level in the multi-barrier approach that's advocated by Justice O'Connor, and the need for conservation, among other things. The multi-barrier approach that I refer to, of course, is inherently precautionary. We see the Clean Water Act as a preventive measure more than a remediation effort.

Another point that had us very concerned was the levels of compensation. We've heard presentations this morning which referred to the various sections, like subsection 88(6), which suggest that the provincial government is unwilling to provide compensation for imposing land use restrictions that could or should reduce the profitability of a farm operation. That section also conflicts with section 83 of the same act, which provides for an appropriate means of compensating a landowner for relinquishing control of their land through purchase, lease or otherwise for public use. Our recommendation is that subsection 88(6) be removed. It would appear that subsection 88(6) serves to redefine expropriation, and that would give the provincial government more freedom to injuriously affect lands. Also, we want to ensure that farmers are appropriately compensated for land use restrictions imposed on their farm operations.

I'll move on. I understand that the sections on permits, inspection and enforcement have been somewhat dealt with already in some of the rewritings or amendments. We appreciate that and hope that it has addressed our concerns. We were concerned that the building inspector model or approach is not suitable for protecting drinking water supplies. It's too subjective. The approach to addressing risks to drinking water would require detailed site-specific information, and it would be impossible to find one individual who could accurately assess all these variables on multiple properties.

Another point that was very concerning to us was the interim period. AGCare strongly disagrees with the pro-

posal in Bill 43 of an interim period in which an assessment report would document required action on the part of a landowner prior to the completion of a source water protection plan. To impose land use restrictions or require modifications on the basis of an assessment report alone constitutes a lack of due process that could result in landowners implementing practices that are unnecessary or inappropriate.

Further to that, I wanted to refer to a report that was commissioned by the Ministry of the Environment in January, entitled *Water Well Sustainability in Ontario*. One of the conclusions in that report stated that "in general, the health of the groundwater drawn to wells is excellent with abundant supply of good quality ... in most parts of Ontario." Clearly, the groundwater resources in Ontario do not pose an imminent risk to the citizens, and therefore interim measures may not be necessary.

Also, I would refer back to the multi-barrier approach, in which we see that there are other ample protections currently offered through the Environmental Protection Act to deal with situations that pose an imminent threat to groundwater.

The authority of source protection committees is another area of concern for us. Bill 43 seems to portray the source protection committee as subordinate to the source protection authority or conservation authority. We support the conservation authorities being in a coordinating and facilitating role; however, they must not be in a position to supplant the authority of the source protection committees.

I'd also like to talk about the section—or the lack thereof—regarding water efficiency and conservation. Bill 43 seems to be silent on the importance of water conservation. There's obviously a clear link between water efficiency and conservation and the protection of drinking water supplies, given that reducing the volume of water takings allows more time for natural attenuation processes, therefore reducing the area required for the time-of-travel zones within that.

Mr. David Armitage: I would just like to say a few words on the precautionary principle. Max referenced it earlier and you've heard about it from many previous speakers.

We certainly support the statement that the minister made on Monday where she indicated that the Clean Water Act is inherently precautionary and that those who are developing regulations will be mindful of the precautionary principle in doing so. We also concur with Justice O'Connor in the second volume to his report. He has a section on the precautionary principle in which he states that the precautionary approach is inherent in risk management.

Agriculture—and other land uses, but agriculture in particular—is a very strong proponent of risk management. You've heard about the environmental farm plan; you've heard about nutrient management planning. We have a whole range of best management practice publications that deal with risk management. So while we are strong proponents of risk management and have no

problem with that being linked to precaution, because “precaution” simply means to take care in advance, we do have some difficulty with it being embedded in the act, as others have suggested. The reason for that really is the definition that has actually been presented to you by many of those presenters. As I understand it, the definition that they’re using is at paragraph 7 in the Bergen Ministerial Declaration on Sustainable Development from 1990. The sentence that has been read to you previously is, “Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

At face value, it sounds like a fairly reasonable statement, but we have real difficulty with full scientific certainty.

The Vice-Chair: Thank you very much for your presentations. Now we’ll open the floor for questions. We’re going to start with Mr. Tabuns.

Mr. Tabuns: Thanks for coming and making this presentation. When I talk to the people in this community whose water supplies are potentially threatened by the Richmond landfill, no one can say with certainty that the Richmond landfill will contaminate their groundwater, make it impossible for them to use their wells or kill off wildlife in the streams. But on a precautionary basis, you wouldn’t put a landfill over top of fractured limestone through which flowed the water that people’s lives are dependent on. So in that case, I have been asked to put forward the idea of the precautionary principle. Do you think that we should build the landfill and see how much leachate flows out the bottom and then go after the people who created the leachate?

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Mr. Armitage: The difficulty we have on the precautionary principle is the threat; you have to realize the distinction between a threat and a risk. Managing municipal solid waste poses a threat but the risk associated with that threat can be managed. So in that case, it might be that they need an alternative to landfill. There are other ways to deal with municipal solid waste, and we wouldn’t have a problem with that.

We believe that when you talk about full scientific certainty, as you’ve said, it is an impossible task. There will always be a lack of full scientific certainty, so, to the extreme, you could say that you couldn’t do anything, that there’s no way to manage municipal solid waste. And it has to be managed.

Mr. Tabuns: Is an ounce of prevention worth a pound of cure?

Mr. Armitage: Absolutely, and precaution is taking care in advance.

The Vice-Chair: Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: Following on, do you believe that this bill, as drafted, is inherently precautionary?

Mr. Armitage: Yes.

Mr. Wilkinson: Okay. I just want to go to the question of the interim period. Just for the crowd, the idea is

that we have the terms of reference and we have the report, and then we uncover that there can be a significant threat to drinking water. And you’re right; the minister has power. If there’s a spill, people are required by the law to notify the Spills Action Centre, we’re required to notify the medical officer of health—all the things that we’ve learned out of Walkerton about the need to take timely action right away. But they could uncover something that a reasonable person would say is significant. Then the question had to be, what is the power of the state? Would you agree, then, that in that type of situation, if we were to amend the bill to say that what you have to do is attempt to enter into negotiation with the landowner right away instead of the heavy state of government, you’d say, “Listen, this is a concern, that we may not be able to wait a year and a half until the full source water plan is done and approved by the community and then signed off by the minister”? So what you’re required to do first is immediately negotiate; in other words, notify the landowner, sit down, talk to them and see what can be done to mitigate that risk. If we were to put in amendments to do that, would you think that that is the better approach? Whether it’s rural or urban—the bill covers all of Ontario—is that the way to go?

Mr. Armitage: We have had those discussions with MOE. We would agree to fast-tracking a situation, as long as there is due process.

Mr. Wilkinson: So we would have the tools, yes. Then you’d have due process because you offer to negotiate. If that person didn’t agree to negotiation, they could appeal that. But there’s that kind of grey area. You’re required already by law to notify somebody, “Holy smokes.” That is happening; you just feel compelled to tell, to protect people drinking, but you can’t wait for a year and a half to deal with it. Then you’d have time to negotiate.

Mr. Armitage: But, as has been stated by others, there are other tools available too as well as the Environmental Protection Act, which deals with threats that may likely occur.

Mr. Wilkinson: And the Ontario Water Resources Act. All those offer—

The Vice-Chair: Thank you, Mr. Wilkinson. Ms. Scott.

Ms. Scott: Thank you for your presentation today. You’re right, farmers are the first environmentalists. I think it’s quite unfair that this bill is going to put the responsibilities onto the landowners and to the municipalities, the way it stands right now.

You mentioned an interim period, and I could go on to that, but do you think this bill is going to lead to a lot of confrontations and lawsuits, the way it is set up right now?

Mr. Kaiser: What I’m hearing and what I’ve heard about maybe the softening from the enforcement standpoint, making it more of a negotiating process, certainly would lessen the confrontational aspect. If the Ministry of the Environment is open to negotiating to a reasonable compromise or a reasonable resolution to a situation, then

certainly—we're all concerned with drinking water; we're all concerned with the safety of it and ensuring that safety. If the process is such that it's easy to work with and the process itself isn't confrontational, then yes.

The Vice-Chair: Thank you, Mr. Kaiser, for your presentation.

LAFARGE NORTH AMERICA

The Vice-Chair: The next presentation will be by Lafarge North America. I believe you know the procedure. You have 10 minutes of speaking time and five minutes for questions, so you can start when you are ready.

Mr. Bruce Semkowski: Thank you, Mr. Chairman and members of the committee. My name is Bruce Semkowski and I am the vice-president of the central Ontario aggregates division of Lafarge. Accompanying me here today are Moreen Miller, North American land director for Lafarge, and Robert Cumming, environmental and community relations manager for the Lafarge Bath cement plant. Moreen and Robert are available to assist me in answering any questions that the committee may have.

Lafarge is the largest producer of construction materials in the world. We employ over 75,000 people in 70 countries. Here in Ontario, we employ over 3,000 people directly in over 230 different operations. We operate two cement plants and various cement terminals. We operate 74 ready-mix concrete plants and 49 asphalt plants, and hold over 163 licences for pits and quarries under the Aggregate Resources Act. We operate in almost every municipality in southern Ontario. As a result of this, we have a unique view of operating in all of the sustainable watershed systems.

Lafarge supports the principles of this initiative to protect drinking water sources for the residents of Ontario. We had a chance to participate in the ministry's consultation process going back to the release of the white paper in 2004 and we appreciate this opportunity to address the committee today.

The principles of this act dovetail with Lafarge's philosophy of sustainable development initiatives worldwide, which support our continued focus on wise management of our natural resources. Our environmental initiatives worldwide to reduce water use overall at all our operations, recycle our natural resources whenever possible, continuously improve our water management through regular environmental audits and continue research on water use innovation are parallel to what Bill 43 envisions for Ontario's future. However, as we have stated in writing to the Ministry of the Environment, we believe this can only be achieved through provincial leadership and province-wide consistent implementation.

Our presentation today will outline our comments on Bill 43 as it is currently drafted, as well as identify a number of issues we believe may hamper the consistent implementation of this legislation. This lack of consistency may be an unintended consequence of the legis-

lation, but we feel it may have a direct and substantial effect on our ability to operate our businesses in Ontario.

With regard to the implementation of this legislation, Lafarge feels very strongly that the province should maintain the primary responsibility for the protection of drinking water sources. This, in our opinion, can only be achieved through direct hands-on management by the Ministry of the Environment. This approach would dovetail correctly with the existing permit-to-take-water process and, through a broader consultative process involving the conservation authorities, municipalities and other stakeholders, would achieve the vision and goals that the act contemplates.

We are concerned with the delegation of responsibility for administration of this program to the source protection committees. We believe this may result in the development of inconsistent plans and policies across the province. This may create inconsistent practices for businesses operating in neighbouring watersheds. Coupled with the limited public process, this could in fact result in a much less coordinated approach across this province.

Unquestionably, the provision and protection of safe drinking water sources in the province is a priority, but the legislation must also consider the continued health of the provincial economy. This is best achieved by having the Ministry of the Environment take the lead in the development and implementation of source water plans. We believe that this intent was reflected in Justice O'Connor's report, and we hope the province will provide the Ministry of the Environment with the necessary resources to maintain responsibility for source water.

Lafarge believes that public involvement in the act is critical. As the act is currently drafted, the earliest opportunity for public involvement in the process does not come until the source water plan is complete. We strongly recommend that public consultation be mandatory at all stages in the development of source protection plans and that the ministry consider a broader public process.

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Our industry has a long history of public involvement with regard to the wise management of natural resources and we believe that the public consultation process, when managed properly, can result in better solutions and greater ownership of work plans and long-term initiatives.

This act should also provide an appropriate and consistent appeal mechanism. As the act is written, convening of a hearing to resolve issues related to a source protection plan is done at the sole discretion of the minister. We recognize that the Environmental Review Tribunal would have jurisdiction over matters relating to permitting, but there is nothing in the act that gives citizens a chance to appeal a source water plan. We ask this committee to carefully consider an amendment to the bill which would provide an appeal mechanism to resolve issues related to the plan itself.

I would now like to address some of the issues related to what we think the unintended consequences of the act

may be, and talk about the potential effects upon our industry. Lafarge uses water in almost all of our operations. However, most of our ready-mix concrete and asphalt operations are located in urban industrial areas and serviced by municipal water supplies. Most of our sand and gravel pits and our quarries are located in rural areas and many of them handle large volumes of groundwater, either for washing sand and gravel, or for quarry dewatering. A permit to take water is required for these activities. Additionally, where water is being discharged off-site, a separate permit for discharge is required from the Ministry of the Environment. These permits regulate both the quantity and quality of water being managed at each site.

It is very important to recognize that, while our permits often authorize the taking of large quantities of water, in fact, the majority of the water is either recycled on-site or returned to our watersheds. A very small portion of the water that we use is actually taken or consumed in the products that we produce. Our data suggests that the amount is less than 10% of the water taken. In gravel pits, the majority of our aggregate washing systems are closed loop, meaning that we recycle all the water in the system. In quarries, the majority of the water is only being moved from the bottom of the quarry where it collects to another part of the local watershed through a dewatering process. It is not removed from the watershed, nor is it used as part of our manufacturing process.

For aggregate operations, the total amount of water moved for dewatering is much greater than the total amount of water consumed. Characterizing the aggregate industry as a large consumer of water is incorrect and misleading.

As the act is currently drafted, water budgets are calculated in part by including the amount of water taken from the watershed that is identified through the existing permits to take water under the Ontario Water Resources Act. This maximum number on the permit is misleading. In the case of aggregate operations, this will not be scientifically valid, and we recommend that the act should clearly distinguish between water withdrawn and water consumed by the Ontario Water Resources Act permit holders.

Lafarge supports the objectives of Bill 43 to provide clean drinking water, but we remain concerned that the unintended consequences of the legislation may have a serious negative impact on our business. For the construction materials industry, further constraints to aggregate extraction will reduce the available supply of aggregates, which, as you know, are a non-renewable resource. Why does this matter? Because our quality of life and a healthy economy are dependent upon an efficient, well-maintained infrastructure. That infrastructure cannot be built or maintained without access to high-quality, economically viable building materials, including both sand and gravel and quarried stone.

As the bill is currently worded, source protection plans will have the potential to be broad-ranging documents.

We recognize that the focus of the proposed legislation is the protection of municipal drinking water sources; however, the broadness of these plans has the potential to alter the nature of land use planning in Ontario. Particular attention should be given to the overlap of existing legislation governing our industry: the provincial policy statement, the Aggregate Resources Act, the Ontario Water Resources Act, the Municipal Act, the Planning Act and the Environmental Protection Act, just to name a few.

The current range of approaches that municipalities and conservation authorities have taken to deal with aggregate extraction in wellhead protection areas underlines our concerns related to inconsistency. For example, some municipalities characterize below-water extraction within a wellhead protection area as a threat or high-risk land use, whereas other municipalities do not take this approach. While Lafarge understands that it is not the intent of Bill 43, we are concerned that local authorities may use the source water protection program as a vehicle to restrict or prohibit aggregate extraction below the water table without an adequate scientific basis for such an action.

In the town of Caledon, the region of Peel has an existing municipal drinking water production well located immediately adjacent to Lafarge's Caledon sand and gravel operation. This site has been extracting sand and gravel below the water table for over 35 years. The regional well is located within 75 metres of our operation. Peel region recently commissioned a groundwater development program to explore additional water supply options for the village of Caledon, which is serviced by this well. The study revealed that the below-water aggregate extraction has had no impact on the quality or quantity of water in the production well, and further recommended that the best location for a new production well was right beside the existing well. However, despite this finding, the comprehensive zoning bylaw for the town of Caledon identifies sand and gravel pits as a prohibited use within the wellhead protection area. There is a map on the last page of the handout where you can see the well and proposed well and the aggregate operations.

In the region of Durham, however, the village of Sunderland is serviced by two groundwater-based municipal wells. Land use within the 10-year capture zone includes aggregate extraction below the water table. As a result of their detailed wellhead protection studies, the region of Durham has concluded that aggregate extraction is not a serious threat to the safe supply of drinking water. This position is reflected in the region's draft official plans, which do not list aggregate extraction as a prohibited or restricted use within the wellhead protection area.

These are only two examples highlighted today of a process that could quickly become inconsistent without intervention and clear direction from the province. We believe that without consistency through the source water protection process, the ability to meet the continuing demand for aggregate resources is at risk. We strongly

urge the province to closely look at the connection between land use and source water protection.

While the ethical case for the clean water initiative is not in doubt, the province must ensure that the unintended consequences of the proposed legislation do not impair the ability of the business community to provide the goods and services that are required by the people of Ontario.

In closing, on behalf of myself and my colleagues here today, I'd like to thank the members of the committee for the opportunity to speak. This is an important provincial initiative and we appreciate your efforts to hear directly from Ontarians. Thank you.

The Vice-Chair: Thank you very much for your presentation. We're going to start question time with Mr. Wilkinson.

Mr. Wilkinson: Great. Thank you, Bruce. It's good to see you again, Moreen and Rob, and thanks for your testimony.

I want to focus in on the question of the public hearings. As the bill is contemplated, we do the terms of reference, then we have the assessment report, and then you get the source water plan. What the bill says is that there "may" be public hearings. Of course, all of those have to be approved by the minister, which gets to your issue of consistency. We heard that yesterday from the city of Ottawa, who are on two different source planning authorities, and they're drawing from a river which they share with Quebec. The ministry has to get that coordination in there and make sure things are rolling out.

Your amendment, I assume, would say that the minister "must" hold public hearings, rather than "may." But if we've had this consultative process and the minister has included that in all of those steps there has to be public consultation, if we say that we must, doesn't that just add in more time? If the community of people who draw that water has already come up with the plan, which is the whole idea, wouldn't you be concerned that if we went to a "must," you would end up adding even more time, which then would add business uncertainty? Wouldn't that be another layer of delay if the community had already agreed and industry had already been part of that?

Ms. Moreen Miller: The question is valid. I don't think it's our intent to suggest that public hearings must be done in every case. We continue to be concerned that there be a complete public process throughout. If it was the scenario that you painted, that everybody was on board, the entire community was on board, I agree: There would probably not be a need for hearings or public input. But we remain concerned that public input should be available at all parts of the process, whatever vehicle is chosen. We just feel it's not quite clear enough yet in the act.

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Mr. Wilkinson: Great. Thank you.

The Vice-Chair: Thank you, Mr. Wilkinson.

Interjection.

The Vice-Chair: He's advising me that there are some people in the back not able to hear, so when you

speak, please go close to the mike. If we turn the volume up, it's going to make some kind of echo, so it will make it worse.

Now we turn it back to Ms. Scott.

Ms. Scott: Can everybody in the back of the room hear now? Is that good? Okay.

Thank you for coming today and for your presentation to us. There are so many topics to hit in this bill, and we have limited time. There certainly has been a suggestion for a business pilot project on this bill before it goes through, just to see the implementation programs.

But I wanted to ask you a question. We've had discussions about the Richmond landfill. We know the government hasn't met its objectives of waste diversion. We've heard that leachate from landfill is a concern. I know there has been discussion about the use of construction products—tires, something within the industry—for an energy source. I just wonder if you have any comments about that, that would help with redirection of landfill etc.

Mr. Semkowski: I'll ask Rob from the cement plant.

Mr. Robert Cumming: Thank you for that question. We would look to our experience in Germany. Lafarge is an international operation. In Germany and in places like Holland and Norway, we partner with governments there. We support the 4Rs—reduce, reuse, recycle—but the additional R in Europe is energy recovery, and that's separate from disposal. That is all done to get to the point where in Germany they have plans now to no longer landfill.

We think we could be part of the solution. We have 30-plus years' experience using different alternative fuels that can be derived from some of the waste materials that are currently going to landfill, but not all of it. There are certain materials we do not want, but there are some opportunities to partner with the government. We're pretty excited about our project that will make use of scrap tires and other waste materials, will reduce our emissions and will allow us to partner with the province and the community to move things forward.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Mr. Chair, before I ask my question, can I make a request for research? Could we have the research department report back to the committee on the economic value of Ontario's surface and groundwater? If in fact that question is beyond their ability, can they report on the existence of reports done by the government of Ontario on the value of our surface and groundwater?

The Vice-Chair: Okay.

Mr. Tabuns: Thank you for making the presentation. I have to say that I'm quite disturbed by Lafarge. You are proposing to convert your cement plant here to become a major dioxin producer in Ontario. Your plant in Saint-Constant in Quebec is the second-largest dioxin producer in that province. That's according to the documentation that you've filed. I don't know how you can come here and say that you have credibility on environmental issues when you have that kind of record in this country. How do you defend yourself when you propose to go forward

and contaminate the air, the soil and the water in this community with a heavy load of dioxins?

Mr. Cumming: I'll respond to that. Thank you very much for the opportunity to address those questions, because they are out there in the community. Under the Environmental Protection Act, we are going through a public review process and a technical review process, and those questions have already been raised and answered through that process.

I'll speak first about the Bath plant. Our dioxin emissions are below the limit of quantification, so they are very, very low, to the point where you can't measure them accurately, and we expect no significant changes with the use of alternative fuels. I don't want to get too technical here, but dioxin formation can happen when you're on natural gas. It's not a function of the fuels; it's a function of the operating temperatures in the system.

Our plant is different from the Quebec plant. The Quebec plant has made some changes in the last couple of years, and we expect to see those emissions back to normal levels. They've been using scrap tires for over 12 years and the dioxin levels have been very low for most of that period. They encountered some mechanical problems that have been fixed, but those mechanical problems are what caused the issue, not alternative fuels.

If you look at the broad amount of information available throughout North America and Europe on the use of alternative fuels, the reports conclude that dioxins are not a function of alternative fuels; they're a function of the operating conditions.

The Vice-Chair: Thank you very much for your answer, and thank you for your presentation. We wish you all the luck.

ONTARIO SHEEP MARKETING AGENCY

The Vice-Chair: Now we move to the next presentation, which will be by the Ontario Sheep Marketing Agency. Welcome, and good morning.

Mr. Chris Kennedy: I'm here on behalf of the Ontario Sheep Marketing Agency, which represents the roughly 4,200 sheep producers in Ontario.

This issue is extremely important to us. We've been involved with the Nutrient Management Act. We are involved with source protection and the Clean Water Act. To illustrate how important it is to us, along with Ontario cattlemen and Ontario Pork, we have hired Jamie Boles and Chris Attema as technical experts to guide us through the massive legislation and so on that our directors don't have time to deal with. We also don't have the technical knowledge they do.

I myself am a full-time sheep farmer—and I have been for 30 years—about four miles south of here on Amherst Island in Lake Ontario. I'm extremely concerned with the quality of water, particularly in Lake Ontario, but since Ontario water mostly goes into Lake Ontario, the whole subject of clean water is extremely important to me. I've also worked on my own farm with the Cataraqui Region Conservation Authority, and they have helped us with

several projects to clean up the discharges from my own farm.

I've been through Bill 43. There are quite a number of good things in it. It's very hard to speak against clean water. You might as well speak against motherhood. Some parts of the bill, though, maybe are not the best way to address this subject. Reading through the legislation, I see very often the words "significant risk." It's completely impossible to eliminate all risk from any activity we do. Any industrial activity—you cannot guarantee there will be zero risk. So when I saw in the bill the phrase "significant risk," it implied to me that there's going to be risk assessment. We're going to see what the serious risks are and deal with those first and then maybe work further down the list as resources become available. This also works in with the O'Connor report of the multi-barrier approach. We cannot guarantee that all source water will always be completely clean as far as I can see, as long as any industrial activity or farming activity takes place in the province. It would be nice if we could, but it's just not going to work.

I was also very pleased to see that the Great Lakes are included. Since we, for our farm, get all our water, except our household drinking water, from Lake Ontario, I'm very concerned with what goes into Lake Ontario.

I was also pleased to see that there are going to be local source protection committees with people who have, we hope, detailed knowledge of the local area rather than having a blanket wide-province approach.

However, as you've probably found out, farmers tend to be a stubborn lot. If you think of farmers as donkeys, you can take a carrot or you can take a stick. This bill seems to me to consist entirely of a big stick and a great lack of carrots. Under the Nutrient Management Act, there have been incentive programs to help farmers comply, but unfortunately in this bill I see no mention of cost sharing or cost initiatives, despite what the recommendations of O'Connor have been and of the advisory committee on source water protection.

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If I can quote from O'Connor, it says that there are four separate elements: planning, education, financial incentives and regulatory enforcement. Bill 43 seems to have the planning down. I see nothing about education, I see nothing about financial incentives, and I see an awful lot about regulatory enforcement. So to me, that is a big stick and a complete lack of carrots.

When the agricultural community has approached the government about financial incentives to enable farmers to stay in business, we've been told to apply to municipalities, and I don't think we're going to get a whole lot of change out of the municipalities. There has been absolutely no promise of any funding at all for farming.

Reading through the information on the permits, it seems to me that permits can be brought in to prevent farmers doing what they have been doing for years if they say they're in a wellhead protection zone. Even though they may have been farming that way long before the municipal well went in, the farmer can be closed

down in his operation with no offer of compensation, nothing to compensate him for what is, in effect, expropriation—you may not like the word—of his land. He cannot carry on his business and he gets no benefit from it, but the municipality and the rest of the country do. So that's a fairly serious concern to me, that in fact it's expropriation without compensation.

Another source of concern to me as a farmer is that the people who will be mainly affected or in many ways affected by this legislation will be the landowners and the farmers. I know you heard earlier from the landowners' associations. I may not always agree with their tactics, but certainly they do represent a very big feeling in the rural community that the urban community, who have most of the votes, are imposing on the rural communities rules that are going to drive us out of business. I think you have to recognize that the landowners' associations do represent a very strong feeling in the rural parts of the province that you need to address.

On the source protection committees—I gather there are going to be about 16 or 17 people on the committees, and it's stated that there will be at least one agricultural representative. That concerns me, since we'll be so greatly affected by it. I'm also concerned as to how the representatives will be picked, because if there's only one representative, he or she is going to be extremely important on this committee to make sure that farmers' and landowners' interests are protected.

If you have any questions—it's a pleasure to talk to you.

The Vice-Chair: Thank you, Mr. Kennedy, for your presentation. Definitely, we have some time for questions. We can divide it equally between the three parties. We're going to start with Mr. Barrett.

Mr. Barrett: You've pretty well covered the water-front on what we've been hearing over the last several days. I grew up with sheep—Shropshires. I'll bet you know how long ago that was. They don't jump in the water. They'll get a drink. I'm not discriminating against sheep versus cattle or anything, but sheep manure is dry. It's the best thing you could put on your garden.

I chaired 18 days of hearings on nutrient management. We heard from people with sheep. I guess my question is, in your sector, why are we putting sheep producers through this again? Is nutrient management not enough to cover your industry? Why do we need legislation to supersede the nutrient management legislation—not that I'm suggesting any more regulations to go with the Nutrient Management Act. But I guess the question is—I think it was a few days ago, we heard a call to kill this bill—if there was no bill, do you feel the nutrient management legislation is adequate to protect water on sheep farms, for example, to protect the water that neighbouring municipalities need from your land or underneath your land?

Mr. Kennedy: As a member of the board of directors of the Ontario Sheep Marketing Agency, I am on the provincial nutrient management advisory committee working on the Nutrient Management Act. When I joined

that committee, I was under the understanding that we would help the government draft regulations to cover the issue of pollution from all farms. Only over the course of that committee have we come to find out that the source water act or the Clean Water Act will, in fact, supersede the Nutrient Management Act. To some extent we've been wondering what we have been doing, since we are going to be superseded. My understanding was that the Nutrient Management Act was what was required to take care of this problem, and so I'm somewhat surprised that now we have a Clean Water Act coming along.

The Vice-Chair: Thank you, Mr. Barrett. Mr. Tabuns?

Mr. Tabuns: Mr. Kennedy, thanks for the presentation. We much appreciate you taking the time to come down here.

We're all coming at this bill from different angles. I have one question for you. If the water that was available for your farming operation was contaminated to the point of not being usable, what impact would that have on your operation?

Mr. Kennedy: I would be out of business.

Mr. Tabuns: Thanks.

The Vice-Chair: Thank you, Mr. Tabuns. Mr. Wilkinson?

Mr. Wilkinson: Thanks, Chris. It's good to see you. You're right: We had pork, and now sheep and cattle. We also had veal, so we had all four from the red meat sector.

Just a couple of comments. You were talking about risk. The bill doesn't contemplate reducing the risk to zero. What it says is that as you assess risk, if there's a significant risk, it needs to be moderated to make sure it isn't significant, and if there is a risk that isn't significant, it needs to be monitored to make sure it doesn't become significant. Just for clarity, there's no intention to try to eliminate risk, because you're right; you can't. The question is, what do we do to mitigate that risk as a society?

I hear your input about the source planning committees and making sure we have agriculture represented. We've had different opinions on that, because you can have, say, a third of the people representing the municipal sector, but in my part of the world, and yours as well, in Perth county and around here, a lot of those municipal people will be farmers. It's just the nature. But I understand the minister's looking at how to be more prescriptive, just to make sure that committee really does represent the community that is drawing that water, whatever the source of the water is.

In regard to nutrient management, the Clean Water Act has primacy, but what it has is a clause in there that says that if it conflicts with any other act—you know, the Mining Act, nutrient management, anything like that—whichever act does the best job of keeping water safe has primacy. So I think we've probably come down pretty reasonably on that, because the Nutrient Management Act doesn't really apply in cities, but in rural Ontario there's the work that's being done, plus environmental farm plans, peer review, all of those things. What we're

trying to do is make sure the act takes that into consideration so you don't go reinventing the wheel. I think a lot of the work on nutrient management will also come into play.

We are definitely hearing the comments on compensation.

Did you end up having to have buffer strips that restricted your land use along a watercourse when nutrient management was put in?

Mr. Kennedy: No. At the moment, because of the size of my farm, I've not had to prepare a nutrient management plan. It's only the very large farms so far that have had to do it. Out of my own interest in cleaning up water, yes, I have put in barrier strips, put in filter beds and so on, with the help of the Cataraqui Region Conservation Authority to improve it, but it has been voluntary.

Mr. Wilkinson: Right, and then using that incentive—that's the carrot. They kind of said, "We'd like to help you do that," and you're a good steward of the land, so you said, "I do want to do that."

Mr. Kennedy: Yes, and they have helped us with funding.

Mr. Wilkinson: Does your farm go right up to the lake?

Mr. Kennedy: It does, yes.

The Vice-Chair: Mr. Kennedy, thank you very much for your presentation.

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ONTARIO CATTLEMEN'S ASSOCIATION

The Vice-Chair: Now we'll move on to the next presentation, by the Ontario Cattlemen's Association. Welcome to the standing committee on social policy. You can start whenever you are ready.

Ms. Kim Sytsma: Good morning, ladies and gentlemen of the standing committee on social policy. It is such a pleasure to be here this morning to tell you what we think of your Bill 43 and where we think changes should be made.

My name is Kim Sytsma. My husband and I farm a cow-calf operation on 1,800 acres in Leeds county.

Today I am here to speak on behalf of the Ontario Cattlemen's Association, where I sit as a board member. For over 40 years, the Ontario Cattlemen's Association has been the unified voice of the province's beef cattle producers. There are close to 20,000 cattle farmers in Ontario, in over 25 rural ridings. Our members own a lot of land. We contribute to the rural economies.

Seeing that today is day four of your scheduled hearings, I am sure you've had just about enough: enough traveling, enough motels, enough Tim Hortons to get you going in the morning. And I am quite sure you've heard enough from the presenters. So when we say "enough is enough," I think you can understand the definition of "enough."

I'll state right up front that the Ontario Cattlemen's Association is all for targeting based on risk, using good, sound science, but we are very concerned about Bill 43

and we would like you to heed the advice you're receiving from rural Ontario. You might think that our concern is solely based on money, on funding. Well, it's not. It is our concern that the government is attempting to be all things to all people and nobody's going to be happy.

In order to get environmental groups to endorse Bill 43, the minister tells them what she thinks they want to hear: that the precautionary principle is integral to the act and pending regulations. In order to appease farmers and landowners, the minister figures the establishment of a safety-net-like hardship fund for those in need is what we want to hear. The government might think this is forward progress; in fact, it is backwards.

We're not against clean water. You're not against clean water. The message you need to hear from farmers, and in particular the cattlemen's association, is, don't make source protection harder than it really needs to be.

I'm sure that all the stakeholders, including the environmental groups, would support a better approach to source protection. Do your scientific studies. Identify areas of geographic risk. Identify land use risks. Prioritize and implement. Then put your money where your mouth is and, as they say, git 'er done.

This act of yours is designed to do some of that, but then you go and use wiggle words like those found in subsection 88(6) around expropriation without compensation. I'm sure the government will say that the act does not explicitly say "expropriation without compensation." But what we're trying to tell you is that if you change a land use, then you are, in effect, taking away our land, and if we can't farm it, then why do we own it? Get rid of subsection 88(6) in your amendments.

In your fact sheets and speeches, you use words like "local decision-making." In rural code, that is, "You are going to pay." I want to touch on this whole concept of who pays, as has almost every other group that has presented to your committee.

As I understand it, Ministry of the Environment staff were quoted yesterday in the Peterborough Examiner as saying that the government will be addressing implementation funding in the amendments, and we applaud that.

Finally, the last point I want to raise with you is the precautionary principle. On Monday, on the grand stage in Toronto, the minister used the words "precautionary principle" as though O'Connor intended that for source water protection. I challenge you to find the passage where O'Connor recommended that the precautionary principle apply to land use activities or source water protection. You won't find it there. The minister said the precautionary principle is an integral part of the Clean Water Act. Justice O'Connor only specifically mentions the concept of a precautionary approach in recommendation 19, and this recommendation relates to drinking water standards, not drinking water source protection and land use planning decisions.

There is a time and a place to use precaution. There is also a time and a place to use prevention. It is possible

that some people think those two terms are the same. They are not. The Ontario Cattlemen's Association supports the use of precaution in the treatment and distribution of municipal water. The Ontario Cattlemen's Association also supports the use of prevention as it relates to source water protection. Prevention is an action that has been determined using good science. You should amend your act so that the person who determines the risk is the person who determines the action, and is also the person who pays for the implementation. In fact, you probably don't even need a new act to achieve a better approach to protecting source waters, which in our opinion is exactly what O'Connor told you to do.

Under normal MOE regulations and instruments, the onus is on the Minister of the Environment to prove that an offence has occurred. That investigation is triggered if an off-site impact has occurred. I understand that some people will think that that is open season for polluters. It is not. From fines and enforcement to high insurance costs, due diligence is a big part of having a successful business, including farming, and we all want a good and healthy environment around our properties. We live, work and raise our families on our land. Bill 43 has that backwards and wants anyone inside a source protection zone or intake protection zone to be the one proving that no offence or off-site impact will occur. That is right: You have not committed a crime, you have not nor will you knowingly pollute, and you have to pay a lot of money to continue to make a living if you fall inside one of the source protection zones. This is blatantly unfair. In fact, it's a tad draconian.

There are both logical and perceptual flaws in applying the precautionary approach concept to land use management decisions as proposed in the Clean Water Act.

First, the logical fault: The precautionary principle was originally developed to provide risk managers with a tool for decision-making on environmental threats from processes or substances that had not undergone safety evaluation or regulatory approval. The precautionary principle was not defined nor developed for application to impose conditions exceeding legal, conforming, normal agricultural or urban land use due diligence standards. Careless application of this principle will create a truly impossible burden of proof on any current or proposed land use activities.

Secondly, the perceptual fault: The term "precautionary principle" is seductively attractive. It sounds like something that everybody should want and no one could possibly oppose. Upon initial consideration, it might seem that the only alternative to precaution is recklessness. But in fact excessive precaution leads to paralysis of actions resulting from unjustified fear. In other words, we just won't farm. The challenge is to balance the slight but non-zero risk associated with current agricultural practices in Clean Water Act zones with the social, economic and cultural value of maintaining these lands under private management and ownership. Inappropriately and recklessly applying the "precautionary

principle" to land use decisions again reflects the inconsistency with Justice O'Connor's Walkerton inquiry recommendations. These sections in the act must be changed to recognize this wrong approach and change it back to normal MOE protocols and processes.

So in conclusion, I want to make it crystal clear: The Ontario cattlemen support a targeted risk-based, linked-to-fair-funding model that is part of the multi-barrier approach to municipal drinking water.

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You need to reconsider your intent to have precautionary principles applied in the act or subsequent regulations.

You need to stop downloading onto municipalities and take ownership and responsibility over source water protection, as Justice O'Connor told you to do. So get rid of the concept of a permit official or whatever you're planning to call it. It won't work in rural Ontario.

You need to address your failure to fund implementation costs and ongoing financial issues that will help make source water protection more acceptable. Adding a well-resourced stewardship fund, as O'Connor asked you to do, would go a long way. Having that fund be the centrepiece of your amended approach would be exactly the kind of support that municipalities and farmers need.

Thank you again for this opportunity to allow us to participate in your hearings. If you have any questions, I would be glad to try to answer them.

The Acting Chair (Mr. Kuldip Kular): I'm Kuldip Kular, Acting Chair.

Thank you, Ms. Kim Sytsma, from the Ontario Cattlemen's Association. Now we'll open the questions with Peter.

Mr. Tabuns: Thank you for coming down and making that presentation. I support the idea of a stewardship fund. I think that the province should be putting money into this and that the major water takers in this province, who depend on high-quality, clean, potable water, should be paying for use of that water.

But I want to go back to the precautionary principle. Last night I was talking to people who lived around the Richmond landfill, people who farm, people whose wells are no longer wells they can have confidence in because of illness. There is a proposal to expand that landfill dramatically in an area where there's fractured limestone rock. That rock is the conduit through which their groundwater flows, the groundwater that they depend on for their farming operations and their drinking water. I'm sure that the proponent, Waste Management, says, "We can prevent any leakage there," even though there already is a plume leaking out from the existing dump. Farmers are saying to me, "We want you legislators to take a precautionary approach and say, 'If you build that dump, if you're wrong in your calculations and engineering, we're out of business. We can't drink our water.'"

Do you support taking a precautionary approach in those circumstances, or do you want to wait until the

dump is built and then charge people for causing contamination of groundwater, contamination that is then irreversible?

Mr. Chris Attema: Thank you for that question. I think it does relate to the heart of a key point that we've tried to make in our presentation: that we really are confused by the interchangeable use of the terms "preventive action" and "precautionary approach." If you bear with me for a moment—

Mr. Tabuns: Yes, please.

Mr. Attema: —those terms are not interchangeable terms. The term "preventive action" speaks to the timing of an action. The term "precautionary approach" speaks to or refers to the reasons for taking an action. Those are two distinctly different concepts, and I want to be very clear: As responsible land stewards, we support the idea of taking preventive actions when based on sound science and fair funding principles. In the case of the landfill, certainly sound science would be part of that equation of determining when it is appropriate to take preventive action.

On the other hand, we do not support the concept of taking a precautionary approach, at least as it relates to our understanding of that term and its reverse-onus-of-proof implications.

The Acting Chair: Thank you for your answer.

Mr. Wilkinson, please.

Mr. Wilkinson: Great. Thanks, Kim, for coming. You're joined by both Jamie and Chris, so that's great.

Ms. Sytsma: I'm a lucky girl; what can I say?

Mr. Wilkinson: Yes, you are. That's right.

The question I had has to do with the fact—if you went to the one-size-fits-all rule; in other words, if you don't do this kind of watershed-based planning that O'Connor was talking about and you say, "No, just let the MOE do it," and they try to struggle with the regulation, that would be one size fits all, like O. Reg. 170, which we've had to spend a lot of time fixing—an inordinate amount of time—because we were trying to have one rule that applied equally everywhere and didn't look at the local condition.

I think that's the whole idea about watershed-based planning. You get the people who are drinking the water to have that, and then it gets bumped up to the minister.

In Oxford, what they're doing as a municipality is they are buying the land if they feel, as a community, that that is significant, that if they don't control that land—they're worried about that risk. So they've, then, taken their own money to buy it, and there's a question about who buys it.

You're not opposed if the community wants to buy land to keep it safe and to keep their source of drinking water. That's fine as long as it's purchased or leased and there's some type of mechanism where the people who are benefiting from that are sharing that, like through a stewardship fund or some type of program. Am I right that if we move that forward—that's what you're saying—if you went to the stewardship fund, I assume it would be to remediate, to reduce risk, or it would allow a

community to purchase that land on which they feel there is an unacceptable risk for the community and they want to make sure they've got control of that land. Would that go a long way?

Mr. Attema: That will help, and certainly on the question of funding, and again the appropriateness and ability to set priorities and focus. In response to your question and comment, I'll draw attention to the piece that I think best expresses that sentiment, and that would be the Grand River Conservation Authority's submission. Specifically, sections 41 through 51 in the Grand River Conservation Authority's submission in Walkerton on Tuesday, I think, really speaks to the approach that cattle producers could support.

The Acting Chair: Thank you for your answer. Ms. Scott, please.

Ms. Scott: Thank you appearing before us today, and for your excellent presentation. I wanted to highlight the fact of what this Clean Water Act, they say, is going to do, but it's really not following Justice O'Connor's recommendations. It's about the downloading to municipalities and the landowners, the running away from the provincial responsibility of source water protection.

The minister, in Toronto, used the words "precautionary principle," maybe taking out of context how Justice O'Connor used those words. I wonder if you could just expand a little bit on the difference between the minister's "precautionary principle" and what Justice O'Connor really meant by "precautionary principle."

Mr. Attema: I believe that was a question that was requested to be brought to committee. We look forward to reviewing and commenting on the definition of "precautionary principle" as it's given to this committee, because it's a term that means different things to different people. We think that when that term is used, it should be very clear in which context that terminology is used. It's almost premature to comment on it until we see what definition was intended when that term was used.

I'll also comment that I think you will find both the agricultural and the broader business community will be unified and will be increasingly vocal in expressing concerns about the precautionary principle if it means reverse-onus responsibilities.

The Acting Chair: Thank you, Ontario Cattlemen's Association.

PRINCE EDWARD FEDERATION OF AGRICULTURE

The Acting Chair: The next presenter is the Prince Edward Federation of Agriculture. Take your seat, please. You have 10 minutes to make the presentation and five minutes to answer the questions. You can start now. Thank you.

Mr. John Thompson: Thank you. I'm pleased to be here. My name is John Thompson. I'm president of the Prince Edward Federation of Agriculture. I would like to present some of the concerns that I and our Prince

Edward members have with Bill 43 as it is currently proposed.

First of all, I would like to make note of the present state of groundwater in Ontario. For this, I refer to the expert panel report prepared for the Ontario Ministry of the Environment called *Water Well Sustainability in Ontario*, final report dated January 30, 2006. I quote from the introduction as follows: "In general, the panel concluded that the health of groundwater drawn to wells is excellent, with abundant supply of good quality groundwater in most parts of Ontario."

I take from this and other information in the report that it is important to continue to safeguard our groundwater resource, but we are not in an urgent situation here. We do have the luxury of time to draft legislation properly, if it is needed at all. Farmers appear to be doing an excellent job in protecting the land and water that we ourselves live on. This only makes sense, as we ourselves have the most to lose if groundwater is polluted.

On our farm, we have lived on this land and water for three generations, going on to the fourth now, and this applies right across rural Ontario to a large extent.

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Several pieces of legislation now govern water quality in Ontario. The Nutrient Management Act was passed on June 27, 2002, and is aimed at reducing non-point source pollution by addressing land-applied materials containing nutrients. The act ensures that nutrients are applied according to crop requirements and limits application if excessive stores of major nutrients are found in soil reserves. It is based on the need to allocate proper nutrients for crop use while reducing nutrients lost to the groundwater to a safe level. There is a focus on controlling runoff, erosion and material leaving through tile drains. New barns or storages or manure spreading are not permitted within 100 metres of municipal wells, and setbacks from private wells are also prescribed.

Surface water quality in Ontario is protected federally through the Fisheries Act, and through the peace, order and good governance legislation, where the matter is of national concern. At the provincial level, water quality is protected through the Environmental Protection Act, the Ontario Water Resources Act and the wells regulation. The Safe Drinking Water Act and the waterworks and sewage act provide further protection to municipal drinking water supplies.

My point with this review is to show that there is a considerable amount of legislation in force now, and we should be cautious in our efforts to solve a problem unless it does exist or has the potential to exist. It is essential that another Walkerton-type tragedy be prevented, but no amount of source protection will make all groundwater safe for drinking without treatment. A tragedy can still happen if a water treatment plant fails to do its job, so that will always be the most important and urgent task.

The following are my key concerns and suggestions in regard to Bill 43.

(1) Bill 43 currently states, "The purpose of this act is to protect existing and future sources of drinking water."

This is too broad a statement in that it could be interpreted to mean all water everywhere, instead of focusing on the protection of municipal drinking water supplies, as we are being told is the intent. The Ontario federation has recommended several amendments which I am not repeating as I am sure they are currently on file. I am concerned about what the effect would be if the groundwater under all our land would be considered an area of concern and no credit were given for currently using best management practices such as nutrient management plans and an environmental farm plan.

It should state, "water sources that are drawn on to provide drinking water to municipalities currently and in the future." I also suggest that new municipal wells and surface water intake zones be sited to minimize the impact on current users of land.

(2) I understand that land may be expropriated if necessary with appropriate compensation. However, I think that land use restrictions could be a form of de facto expropriation, and the bill states that the government is unwilling to provide compensation for this. This is an area to correct. If a farmer needs to retire some land or buildings from productive use, appropriate compensation needs to be paid.

(3) I am concerned that this bill seems to give total and arbitrary power to permit officials, who will decide what is acceptable and what is not. They would be permitted to go on to private property without the consent or even the knowledge of the owner. In my view, they would be able to restrict normal farm practice if they choose to do so and would even be able to stop a farming operation. This is clearly not acceptable.

I think the guidelines to be followed should be in writing. One should be able to negotiate acceptable farming practices, if necessary, with credit given for best management practices such as following an environmental farm plan and nutrient management plan guidelines, whether the farm has a formalized plan or not. As well, an appeal process needs to be established.

To conclude, I think that this bill leaves us with too many unanswered questions and therefore much concern. We do not know how much land will be involved and what activities will be regulated. We do not agree with the permit official type of approach and are concerned that the costs of implementation will be left with the local taxpayer in spite of the fact that it is for the benefit of the whole province. It is not sustainable when we put environmental costs onto rural people. I would like the government to identify the gap which they are trying to fill and tell us why this is not being covered by existing legislation.

Lastly, I hope that the government will consider the input which is being received and make significant improvements to the bill.

The Acting Chair: Thank you, Mr. Thompson. Thank you for leaving quite a bit of time for questions. Mr. Wilkinson, please.

Mr. Wilkinson: Thanks for coming in, John, and for being a leader in your county, which is one of the most

beautiful and productive counties. I grew up in Trenton, so I know all about it. I had a lot of fun in Prince Edward county growing up, I want you to know, so we're always happy to be there.

Some of the concerns that have been raised are being addressed: the idea of going away from the building inspector model to risk management; making sure that as you negotiate that, everything you've already done to be a good environmental steward is taken into account—you don't have to reinvent the wheel—and making sure that anybody who has to go on to land is fully trained on the whole issue of biosecurity. The bill says that if there were something injurious, the state would have to pay, but it's always better not to have to cull your barn. We just have to make sure that if there's someone showing up, you know that they're coming.

Your question was, "Why do we have to go this way? Why don't we amend the EPA?" Our thought is that we remember the experience we inherited under O. Reg. 170, trying to have a regulation that applied to everybody. What O'Connor was talking about was, you get the people who are drawing the water together to work it out instead of having this one-size-fits-all. You've got 70% of the people drawing their water from the Great Lakes, some people from rivers and streams and everybody else from our great aquifer, so it's different. The idea is that if you made it local and you based it on science, then the people would understand it. That's why the province is paying for all the science.

We haven't got to the implementation side, and you need to do that just to figure out a cost. The minister has said that obviously there can be hardships, so we have to compensate for that, but what we're hearing a lot is the idea that really what we should do is make sure that we have the stewardship fund or some type of a mechanism to make sure that agriculture particularly understands that we're going to work together. Nutrient management didn't go through until people started putting money on the table. I remember that: "Oh, you've got to take your buffer strips out; you've got to have new storage." That went over like a lead balloon. I know that when we took over, we had a lot of work to do on that to change those regulations.

But if we go to that approach, is it better to have the community coming up with this plan rather than the ministry trying to have a plan for everybody? The alternative is to amend the EPA. Then you're into regulation and you're having the one-size-fits all, and that equals regulation 170, which everybody agreed was not the right way to approach it.

Mr. Thompson: I guess I didn't suggest the amending of the EPA; I'm just saying that nobody's told us what the gap is—what is not being plugged at the moment. When we have EPA, we have nutrient management and we have environmental farm plans, where's the gap? We think we're covering it.

Mr. Wilkinson: I guess the recommendations from O'Connor were that all of these things you were talking about, all the different acts have to do with the water

after it leaves the aquifer, the lake or the river. What we need to do is the cheapest thing—there's still the question of who pays—which is, keep the water clean in the first place. He was saying, "If you're going to have a multi-barrier approach"—because you can't just count on one—"the smartest thing to do first is identify whether there's anything going on right now or in the future that could be polluting the source." Let's make sure we're keeping the source clean and then do that as a community as opposed to having it come down from the ministry.

The Acting Chair: Ms. Scott, please.

Ms. Scott: Thank you for appearing here before us today. I think that that's what they have been doing with the environmental farm plan and the nutrient management plan. That's what the gentleman was trying to say: They're already at the source trying to protect it. According to all the rules, they've been good stewards of land and they've come up to that standard.

With that—and you can answer Mr. Wilkinson's question—would you like to see in the legislation a little bit more comfort in the fact that they have to phone before they come on to your land to do the assessment? You've been good stewards. The confidentiality has to remain with the environmental farm plan and the nutrient management plan. So when the person comes, they should be prepared to know what you've already done on your land, make the appointment with you etc, and then you know what their report is. Then an appropriate appeal situation for you—we've mentioned it before: Instead of going to the Environmental Review Tribunal, maybe using some of the existing normal farm practices tribunals. You can answer any part you'd like, but go ahead.

Mr. Thompson: Well, it is important that if there are going to be visits, they need to call ahead and arrange a proper time, and yes, you need to be able to provide the background to these people. Biosecurity is important, as Mr. Wilkinson mentioned. I didn't bring it up in my talk, but I'm a chicken farmer and I'm quite concerned about biosecurity, that nobody walks into the barn.

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Coming back to Mr. Wilkinson's question, my understanding of nutrient management is that by having a proper storage for the manure so you don't have the runoff and by applying it at proper rates and at the proper times of the year with the proper setbacks, we're already being preventive. I guess that's what I was saying.

Ms. Scott: So you've already done due diligence and you should be fairly treated for doing your normal farm practices that you've been asked to do?

Mr. Thompson: Yes. It's only the larger farms now, typically, that have the approved nutrient management plans, but that doesn't mean the rest of us aren't following those things. We just haven't got it totally written up and approved by the ministry because we didn't have to. But I think a lot of us still follow that type of protocol. It only makes good sense, and that is the normal farm practice of today. If someone has a problem, the normal farm practices are your defence. But the government

defines normal farm practices nowadays as following the Nutrient Management Act, so whether you had done a plan or not, you still need to be following that.

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Thank you very much for coming in and making a presentation. If, in fact, this act was amended so that funds were provided to help deal with unexpected costs and provide for incentives and education, would there be greater support for this kind of action in rural communities in Ontario?

Mr. Thompson: Yes, there would be greater support if the financial issue was fully addressed.

Mr. Tabuns: That's one of the key points in terms of rural support for or opposition to this act?

Mr. Thompson: It's a key point, yes.

The Vice-Chair: Thank you very much, sir, for your presentation.

SANDRA LATCHFORD

The Vice-Chair: The next presentation will be by Sandra Latchford. Welcome. You can start when you're ready.

Ms. Sandra Latchford: Thank you for the opportunity to speak to the bill. I believe there's a handout for you.

I am a private citizen coming not on behalf of a large group but of a small group of landowners who have wells and have had experience of already losing our wells to pollution and/or the well going dry and having to dig more wells. In fact, one of my neighbours is now on their third well-drilling in order to get water. We have also had an experience in our family of having a dairy farm that had to quit being a dairy farm because of the pollution of the water. They drilled three wells and could not get water that could be treated sufficiently to maintain a dairy herd.

Mr. Tabuns: Sandra, I gather that people can't hear you. Could you bring that microphone closer to you, because they want to hear what you're saying.

Ms. Latchford: Is that better?

Mr. Tabuns: Is that better back there? Yes. Thank you.

Ms. Latchford: Thank you. So I am speaking as more of a private citizen and taxpayer. As I said, my neighbours and I have looked over the bill and we have some concerns. In the report that I gave you, we have 10 recommendations. At the very end of the report, we have summarized the 10 recommendations on two pages so that you can read them quickly. If you wish to skip the rationale for why we made the recommendations, you may, and go right to the recommendations themselves. They are organized in the order that the bill is written, and so we'll go through them in that order.

Our first concern is the definitions in part I of the bill. We find the definitions are not very specific, they're not measurable, and we have concerns about how that might be implemented down the road. I've had a lot of experience dealing with permit officials. Some permit officials

are wonderful to deal with and knowledgeable. Others are the permit officials from hell, and if there is any opportunity for them to over-interpret any rule, they will, so we have a lot of concerns about that. In fact, four of our recommendations concern the qualifications and monitoring of permit officials. If your definitions are measurable and tight, you will have less likelihood of having permit officials run away with them down whatever which road.

We have a lot of concerns that local stakeholders will not be on the committees. We would like assurance in the bill that people who are really going to be affected by this bill will be part of the committee process. We'd also like to see an appeal process on how those people are chosen to be on that committee, so that you can go in and challenge and say, "Why do we not have local farmers or business owners on that committee?" An appeal process is always good for transparency issues and appealing, just so that we know what's going on.

Our third recommendation is about compensation. You've heard a lot about that this morning on different issues. We are very concerned that land users and businesses will not be compensated should they be identified as a high-risk area.

In another province that I lived in, we had a gas station identified as a problem in a water source area for a city. The gas station had to close and the tanks had to be dug up. Guess who got to foot the bill? It is not fair to have the business owner paying for that. They were put out of business. They had to pay to move gas tanks, and yet it was a municipal issue, that this was a source water area.

I would like to see in the act very clearly that it will not be the business owner and the land user who has to pay for that if they are identified at high risk. It has happened in other places, so I don't want to hear, "It won't happen here." I'm afraid it might.

Recommendation 4 is again back to funding. You're downloading to the municipalities. As a taxpayer, I'm not thrilled to get more taxes. There are many people who are on fixed incomes. We do not have an unlimited pot of money to go to. We cannot just say, "Oh, well, it's a wonderful thing. We need clean water"; who is going to pay? I think the province has to take responsibility for at least cost-sharing this and not downloading it to the municipality or the landowners. We're very concerned about that.

Recommendation 5 is that we would like to have a quality assurance program. I'm not comfortable with having you say the municipalities will monitor the risk areas. Who's monitoring the municipalities? We've had that example before in Walkerton. My job in real life is assessment and monitoring and quality control. It isn't sufficient just to say, "Oh, do this and I'm sure it will be done correctly." I like to be out there checking to make sure you are doing it correctly. If you know you will be observed and watched and monitored closely, you're more likely to meet the standards that are there. When there is no overseeing, it's easy to slip into a really slipshod way of running things. So we would like to

know how that will be done, and we want quality assured.

Recommendation 6 is the implementation process and those permit officials. We would like to know how they will be hired, who they will be, how they will be trained. Will there be ongoing training of good quality? This inconsistency in permit officials across the province is not a good thing. You really do need to maintain that, and the province, I think, should be sharing that cost.

Recommendation 7 is back to the permit officials again, making sure they carry out the standards and monitor what they do. I noticed in the bill that you talked about an annual report coming in. Well, I could write an annual report about myself and tell you I'm doing a wonderful job. I think there should be a more objective evaluation of whether I am doing a wonderful job. I'm not likely to write to you and tell you how badly I'm doing. I'm more likely to tell you I'm wonderful. You need to have that kind of outside evaluation to ensure the permit officials are indeed doing what they're doing.

I don't mean to pick on the permit officials but, really, your whole bill is very much an authoritarian approach to trying to get people to voluntarily comply with your legislation. There's a lot of research that shows the authoritarian group punishment route doesn't work very well at all.

I was interested to hear other groups this morning talk about the carrot-and-stick approach. You do need to up the carrot in this bill if you expect compliance. One of you asked, "Do you think there will be controversy? Do you think people will not co-operate?" I think people won't co-operate. People are very tired of draconian methods by permit officials. I think regular taxpayers who would never disagree are getting very irked at having all the rules and regulations. Your rules and regulations are meant for people who will break the law, not for the law-abiders. Most of us voluntarily comply with all laws. I didn't speed driving here today, but there was no police car behind me and none in front of me. I voluntarily complied with a rule that I thought is a good rule and an important rule. Most people in our society do that, but when you start becoming draconian, miserable and picayune in everything you do, people get their backs up and they start not wanting to comply. They don't understand and they don't want to understand. They get very aggravated.

I'm afraid this bill is setting a tone of "them against us" right from the get-go, and I think you're going to have a very difficult time getting it implemented. Even if you have wonderful permit officials, you're already getting a lot of anger and resentment to the bill before you've even gotten it off the ground.

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We also were concerned about the expropriation clause and, again, when you're trying to take away someone's livelihood—you may leave them with the land and there's nothing they can do with it, which is totally inappropriate and unnecessary when we can look at other ways to make sure things happen.

So you have the 10 recommendations. I hope you will really take the feedback that you're getting seriously. I hope you will also recognize that if you write a bill that has flaws in it, it will not be implemented well. You can't carry out a flawed bill. Take the time to go in and take the bugs out of it, address the serious concerns that are there, and come up with a bill that we will be able to implement effectively to protect our water. Thank you.

The Acting Chair: Thank you, Ms. Latchford. Now for questions, Ms. Scott, please.

Ms. Scott: Thank you very much for appearing before us today and volunteering all your time and your neighbour's time to produce a thorough report with amendments, which is what we like to see, because then, as we go to clause-by-clause September 11 and 12 in Toronto, we have amendments and suggestions in front of us.

You're right; we've heard a lot of, "You bring this in in such a dramatic way. You're not going to accomplish anything. It's too confrontational. We all want to be good stewards of the land but you're not giving us the tools to do that." You mentioned the permit official, the risk management official—whatever terminology we're using now. Do you think that we could actually do this and accomplish it much more if the Minister of the Environment and the Minister of Agriculture, Food and Rural Affairs used—you know, you've heard of the nutrient management plan—things that are already set up? If we could just expand that more, give them some more tools, might that be an approach that would accomplish a lot more?

Ms. Latchford: I think it might, and part of the reason is that you've got a lot of anger towards the bill already, which means it will be more difficult to put in place. So if you can use some of the tools that are there, tweak them and use the carrot with those tools, I think it will be more effective.

One of the problems with all kinds of programs: You can have wonderful theories of how things should be done, but one of the things that I've seen chronically over time is that you do not fund the implementation process. You fund the writing of the law, you fund the writing of the regulations, and when it comes time for implementation, this is when the dollars get cut off and you have a very poor way of getting it implemented, so it's not effective. If there are already bills in place and they have rules and good policies, and we have some goodwill towards those bills and regulations, then we should be using them.

Ms. Scott: Thank you very much.

The Acting Chair: Peter Tabuns, please.

Mr. Tabuns: Thank you, Sandra, for coming in and making the presentation. It was quite useful. I have a question for you, though, because I was following through your argument on who pays for cleanup, and I actually think the province should put in money, should provide incentive, should have a stewardship fund. But I was meeting last night with the folks who live around the Richmond landfill. There is a plume of leachate coming out. It's damaging wells; it has potential to damage the water supply to the Mohawks in the Bay of Quinte.

Ms. Latchford: I'm familiar with that.

Mr. Tabuns: Who pays? Should it be the residents whose wells are being contaminated, the Mohawks, the local municipality, the province or the operators of the landfill?

Ms. Latchford: I think that it's a complicated issue because you come back to why did we allow the landfill in the first place and who did in fact allow that landfill to go there, when we know that the research is very shaky on landfill and the later pollution down the line. So certainly I don't think the people whose wells have been polluted should be paying. They're innocent victims in this, as far as I'm concerned, when we have that kind of happening. I think the government has to work with the owners of the landfill and come up with some resolution and see who is going to pay here. I really would like to see it done more expeditiously than we have done in the past, because we tend to let this argument go on about who will pay. The person whose well is gone has to pay right up front to get water immediately, so they're paying out of their pocket right away, while the business owner, in this case Richmond landfill, is not paying for that well right away, and the government isn't paying, so the person who pays first is the landowner, which I think is incorrect. I think someone, like the government, should step in and make sure that the landowners have water and then they can go after the business owner that didn't do a good job.

Mr. Tabuns: Thanks for the answer. I appreciate it.

The Vice-Chair: Mr. Wilkinson?

Mr. Wilkinson: Thanks for coming in, Sandra. It's a great analysis of the bill. Just following up on Mr. Tabuns's point, we were able to pass a bill that, at the time, was quite controversial about the fact that if you spill, you pay, right? In other words, to make sure that it's not the victims or the taxpayers who are going to pay because somebody else did something and they became the victims.

I am interested in your point, because you obviously have some experience, on this idea of quality control. Even if we get rid of the building inspector model and go to the risk management official, you still want to have that consistency. The plan is to have peer review of these individuals across the different watersheds so you do get that consistency. Do you think that is one of the ways we can make sure we get that consistency, so you don't have people creating their own little kingdom in their own little vacuum, not in relation to everybody else?

Ms. Latchford: I think peer review has a role in assessment and quality control, but I think you also need someone who's outside and independent. My experience with peer review is that with, I would say, "the old boys' network"—and I don't mean to be sexist—you tend to get a group of people who know one another, and it's very hard to criticize someone you know within your own association. So peer review works—

Mr. Wilkinson: To a certain level.

Ms. Latchford: —to a certain level. You also have to use very good strategies to implement peer review in

which you counsel and encourage people and train people in how to offer peer review in a way that will be acceptable to others so it's not always just negative.

It's always good to have another source who has no ties, who is truly independent and objective, come in and look that over. That's the only way, in my experience in all the assessment that I've done over the years. You have to have that level of objectivity and independence away from the group, or you get, "I didn't want to tell my friend they were doing this." That starts to play a role in it, and that's not appropriate.

Mr. Wilkinson: And at the front end, make sure we get consistency of training, that that training is consistent and not one-off.

Ms. Latchford: Incredibly important, yes.

The Vice-Chair: Thank you very much for your presentation.

CLEAN AIR BATH

The Vice-Chair: We move to the next presentation, by Clean Air Bath. I believe you know the procedure. You have 10 minutes for speaking time and five minutes for questions.

Ms. Corinna Dally-Starna: Thank you very much. I first need to make sure you know that my name isn't Susan Quinton; it's Corinna Dally-Starna.

The Vice-Chair: Can you get closer to the mike, please? Or you can move it closer to you.

Ms. Dally-Starna: I will do that. Can you hear me? Okay.

First of all, thank you very much for giving me the opportunity to speak to you today. In fact, when I talked to someone yesterday, that person suggested to me that I shouldn't start out my presentation today by mentioning the word "Lafarge," because if I did so, nobody would listen to me; I would simply be tuned out. Of course, I hope this is not going to be the case.

I am here to represent Clean Air Bath. Given that our citizens' group is rooted in this community, which relies on Lake Ontario for its drinking water, any issues surrounding the protection of source water and activities that might constitute a threat to our drinking water or a threat to the quality of water in general are understandably of utmost importance to us.

Clean Air Bath is a group of concerned citizens that formed in response to cement-maker Lafarge Canada's proposal to burn waste, store waste, and dispose of cement kiln dust resulting from the burning of this waste. Our group is concerned about the impact of this plan on the community's water supply as a result of atmospheric deposition, the discharge of leachate into Bath Creek, and seepage of contaminants into the groundwater.

Lafarge plans to burn tires, pelletized municipal waste, animal bone meal, solid shredded biomass, non-recyclable plastics, and other potentially hazardous material in the more than 30-year-old kiln of its Bath plant, just a short distance up the road from here.

In what way is this situation relevant to the proposed Clean Water Act currently under consideration?

First, Lafarge's cement plant is located adjacent to two bodies of water: Lake Ontario and Bath Creek, which empties into Lake Ontario.

Second, this community relies on Lake Ontario for its drinking water.

Third, based on published emissions data from a Lafarge cement facility burning waste in Quebec, expected stack emissions here in Bath will include a whole array of toxic air pollutants. There is sufficient scientific evidence that such air pollutants, among them metals and combustion emissions, have the ability to settle into bodies of water, either directly or indirectly, and damage ecosystems as well as public health.

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Fourth, burning the mixture of waste described earlier to you in a kiln that was not designed for this purpose can be expected to produce cement kiln dust of similar toxicity to what is leaving the stack. As a consequence, leachate from landfilling this contaminated cement kiln dust on-site poses a threat to Bath Creek and, by extension, Lake Ontario.

Our primary interest in examining this draft legislation, then, was to ensure that the proposed Clean Water Act contains safeguards that will address any potential threat to our drinking water resulting from industrial activity in general and Lafarge's activities in particular.

Also, based on our less than satisfactory experiences with the participatory process, we want to ensure that this legislation will provide Ontario residents with ample opportunity for meaningful public participation in decision-making relative to source water protection planning. By meaningful, we mean full access to the process, but more importantly, provisions that will facilitate the public's ability to impact decision-making in a substantive way.

In summary, it is Clean Air Bath's position that this community may not enjoy the full protective benefits of this act unless certain amendments are made.

Clean Air Bath has prepared a formal submission that makes references to specific sections of the proposed act. Here we only offer a brief summary of key points.

First and foremost, we believe that this legislation should be grounded in the fundamental environmental values of the precautionary principle and pollution prevention and that this bill should contain specific wording to that effect. Moreover, it should take into account cumulative adverse ecological and human health impacts.

Following that point, then, we believe that source protection demands an understanding and recognition of all the sources of pollutants that enter a body of water. Therefore, it is imperative that Bill 43 address issues surrounding atmospheric deposition of pollution into water. Given the impact of atmospheric deposition on water quality, the identification of the boundaries of a source protection area must take into consideration both air shed and watershed boundaries. This is of particular

relevance to section 13 and its outline of the contents of the assessment report.

Furthermore, although the act is specific about implementing prohibitions of activities inside the source protection area, it makes no provisions for regulating harmful activities outside the area. It is important to ensure that activities outside a source protection area which may present a significant threat to the source are controlled or prohibited.

Clean Air Bath is concerned that the Bath community, or others for that matter, may not receive the protective benefits of this act if a polluting plant such as Lafarge is located outside a source protection area. At the same time, source protection plans should be designed for all source waters, including those outside conservation areas. If our source, for instance, was not designated to have a source protection plan, then this community would never enjoy the protective benefits of the remainder of this act.

Lastly, based on Clean Air Bath's less than satisfactory experience with aspects of public participation, we believe that the public needs to be given the opportunity to be involved at every stage in the process, particularly early on. Also, it must be made easy for people to become involved in decision-making about an issue as important as threats to local drinking water sources. Although Bill 43 provides for some involvement, there is no opportunity for public input at the early stages in the process—that is, at the terms of reference and the assessment report stages—nor is participation easily accessible to all members of the public. That is why we strongly recommend that in addition to including provisions for written comment periods, Bill 43 should require that public information meetings be held early on in the process to ensure greater representation of the affected community.

Clean Air Bath expects that changes to the proposed act as outlined above would ensure that the depositing of air pollution into water resulting from Lafarge's planned burning of waste and the discharge of leachate into Bath Creek will be made part of an assessment report examining present and future threats to Bath's drinking water supply.

Mr. Wilkinson pointed out earlier that we need to keep the source clean. That is precisely what we're talking about here, and we expect and are very hopeful that the act will do that for us. Thank you.

The Vice-Chair: Thank you very much for your presentation. We're going to start the question period with Mr. Tabuns.

Mr. Tabuns: Thank you for that presentation. Is there already leachate draining from the Bath cement kiln dust storage into Bath Creek at this point?

Ms. Dally-Starna: I have a submission by Lake Ontario Waterkeeper to that effect. Part of my presentation was to make you aware of the fact that, while most people know about the application for burning waste, a lot of people simply don't know about the expansion and management of the landfill site, of landfilling the cement kiln dust.

According to the information that we have, there is leachate going into the creek. Applying for the permission for expanding this area was only done now whereas, apparently, the landfill site was already enlarged at an earlier stage.

Mr. Tabuns: So they had expanded the size of their landfill without getting approvals from the province.

Ms. Dally-Starna: That is the way it appears.

Mr. Tabuns: And Bath Creek, which is receiving the leachate from this landfill, goes through Bath?

Ms. Dally-Starna: It goes through Bath and it empties directly into Lake Ontario. Local residents have reported, for example, seeing discoloration in the creek. We are trying to get the ministry to look at all three applications in context to understand that they are interrelated and therefore will do the appropriate environmental assessment, because we think that this is very important.

The Vice-Chair: Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: Thanks, Corinna, for coming in. Just working on the act here, then, the terms of reference—because you're saying you want right to the terms of reference, which then lead to the assessment report, which then leads to the plan. There's a requirement that they have to consult with all of the municipalities. So is your concern that if the consultation is through the municipality, there could be groups of citizens within the municipality that wouldn't be heard or wouldn't be given due deference, that their concerns wouldn't be heard?

Ms. Dally-Starna: Yes, and let me make that very specific. We consider ourselves almost to be a little bit expert on this business of the participatory process. If you ask many people in this community right now about how they feel, for example, about the Lafarge issue, they will tell you that until last year they didn't even know what was going on; they had absolutely no clue. How information is disseminated is absolutely crucial. So you would have to ensure that there are provisions made that the municipalities will in fact have to consult with the public and outline some ways in which that is to be done.

We feel that information meetings are a good way to get started simply because a lot of people don't even know about the Environmental Bill of Rights or how to engage in the comment period. So you are only addressing people who are familiar with these processes and who feel very comfortable with these processes. People who do not, people who like to speak about it, people who like to hear information will simply not be involved. I think we need to make sure that we get good representation.

Mr. Wilkinson: And that would reduce misinformation as well.

Ms. Dally-Starna: Precisely.

The Vice-Chair: Thank you very much, Mr. Wilkinson. Ms. Scott.

Ms. Scott: Thank you for your presentation here today. You've touched on a lot of topics, including public participation, with which we agree. I'll just put in a couple of quick questions here. One is—maybe your

suggestions: There was a promise for waste diversion, removing things from our landfill, and we were not able to meet those targets; so maybe suggestions—we've mentioned construction materials, tires—about what you think we're going to do with these products besides shipping them over to Michigan, which is not going to work in the long run. Secondly, when you speak of leachate and that, do you feel that MOE is not following up on contaminations or alerts? Those are two questions I have for you.

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Ms. Dally-Starna: The first question—are you asking me what I suggest should be done with the waste?

Ms. Scott: We've got the waste. What are we going to do with it?

Ms. Dally-Starna: You might be able to tell by my accent, but actually I'm coming from a country where a lot of waste is incinerated. Nobody is saying that waste can't be incinerated. All we are saying is that if something is incinerated, it needs to be done very properly. While Lafarge, for example, makes references to Germany and what they do there, there's good information out there that communities there are protesting the same thing, and they are protesting it for the simple reason that you're doing something in a facility that wasn't designed to do that sort of thing, and that can't be. If you have a kiln that was designed to burn oil and gas, for example, but it wasn't designed to burn this kind of fuel, then that's our issue really.

Ms. Scott: But the Ministry of the Environment files certificates of approval. They'd have to approve it before they could burn it, wouldn't they? I'm just wondering if you think there's a problem with the system.

Ms. Dally-Starna: The problem with the system is this: The ministry has responded to citizens' inquiries about this issue, all right? The ministry makes it very clear they have determined that there's not going to be a threat to the environment or human health on the basis—and please listen carefully—of information material submitted by Lafarge.

Now, with all due respect to anybody, that's pretty ludicrous. Anybody on the street knows that—we teach children this, by the way—you need to make decisions based on all the information available to you. What we are asking is—the only way that can be done is if you go through a good assessment process. You shouldn't just be doing that on the basis of the proponent's information. That doesn't really make any sense.

The Vice-Chair: Thank you for your presentation.

DUCKS UNLIMITED CANADA

The Vice-Chair: We'll move to the next presentation, which will be by Ducks Unlimited Canada.

Welcome, sir. You can start whenever you're ready.

Mr. Erling Armson: My name is Erling Armson and I'm a biologist with Ducks Unlimited Canada based out of Kingston, Ontario. On behalf of Ducks Unlimited, I'd

like to thank the Chairman and members of the standing committee for having the opportunity to speak to you.

A little bit about what Ducks Unlimited is, just for those of you who don't know what we do: Ducks Unlimited Canada is a private, charitable, non-profit conservation group. We're really dedicated to maintaining, enhancing and restoring wetlands and uplands associated with wetlands for the benefit of waterfowl, wildlife and the people who live here.

Ducks Unlimited Canada invests about \$75 million a year throughout Canada. In Ontario we've secured, enhanced and restored about a million acres of land, representing about 1,600 projects and involving almost 2,000 landowners, many of whom are the types of landowners and associations you've heard today.

I'm going to kind of hone this down to three points, but just a little bit of connectivity between wetlands, water quality and the water act: The connection between clean water and healthy watersheds is a key element of Justice O'Connor's report. Wetlands have and will continue to play an integral role in Ontario having healthy, diverse, productive and naturally functioning watersheds which, as a result, will provide clean water for Ontarians. It has been well documented that wetlands play a significant role in maintaining both the quantity and quality of water throughout Ontario's landscape and in fact the world's landscape. Wetlands filter and purify water flowing into them, retain water on the landscape, reduce peak flows and flooding, as well as act as groundwater recharge and discharge areas. Obviously wetlands are a very important habitat type that really relates to water here.

When wetlands are removed from a watershed through drainage, filling or development or are degraded to an extent from various land use activities, as they have been in much of southern Ontario, water quality is reduced, groundwater levels are lowered and flooding problems become more extreme.

Ducks Unlimited Canada is supportive of the proposed Clean Water Act in principle and is really supportive of the watershed-based approach in the local input/local stakeholder process, but we see this as only a portion and a part of what an Ontario water management strategy should be. As has been previously mentioned, there are many acts that have been implemented throughout the years, many of which relate to clean water, many of which do it directly or indirectly. I think it would be prudent if the province looked at that whole ball of wax and simplified it somewhat so that there are not all these other acts that may or may not get superseded by this particular act in terms of clean water.

So here are my three key points. These key points are meant to be constructive and to try and improve the existing proposed act.

The proposed act, as you have heard, is very heavy on process, regulations, enforcement, fines and policing—as you've heard, all stick and no carrot. In fact, it's a big bat with not a shred of carrot.

While this must be a part of the act in terms of those functions, there is absolutely no indication of any land

stewardship component that will be needed if the Clean Water Act is to be implemented and if clean water is to be sustained in Ontario.

Remember, southern Ontario and portions of northern Ontario are fragmented with hundreds of thousands of individual landowners ranging in size from urban areas up to thousands of acres. If we don't address their needs and concerns, whether they be rural farmers or rural non-farmers, this act will fail.

Education, extension and landowner-based stewardship incentive programs must be a component of the overall act, and I know you've heard that from various groups here. As such, we recommend and kind of insist that those kinds of programs must be part and parcel of the act. Remember, in the O'Connor report, recommendation number 16 indicates that the province should provide "cost share incentives for water protection." So let's follow through on that.

As stated previously, this act should be seen as only one component in maintaining healthy drinking water now and in the future for the people of Ontario. Although reference is made that this act will take precedence over or supersede other acts, regulations, municipal zoning, etc., it is unclear how this act will be integrated with the many other companion and potentially conflicting acts, regulations, programs and so on that are currently in existence in Ontario. It is also unclear as to the definition and importance placed on both groundwater recharge areas and vulnerable aquifers compared to municipal source intake zones. It is our hope that the source water plans that are developed on a watershed basis take into account the importance of water, land uses and the value of natural features such as woodlands and wetlands from the source, i.e., the upper reaches of the watershed, to the sink—the bottom of the watershed. We hope the province and municipalities do not use this act to just focus in, as is perceived, on municipal intake zones to the exclusion of the rest of the watershed, which really dictates what type of water ends up in the bottom end of the watershed.

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Finally, the costs and benefits of this act do not seem to be apparent anywhere. The tragedy of Walkerton, six people tragically dying and so on—but what are the costs and benefits of this act? It's imperative that some process be incorporated to address this so that both the province and the people of Ontario can know the value of this act to the quality and quantity of drinking water for Ontarians. The proposed act provides no section or component for sustainable funding of this ongoing and probably expensive initiative. It is therefore recommended that some sustainable funding mechanism be included in the act, not only for the implementation, enforcement and regulatory aspects, but also from the point of view of the stewardship fund for cost-benefit, and incentive programs to help landowners voluntarily do the right thing.

In summary, I would like to thank both the province and the members of the standing committee for the hard work that you're doing in terms of trying to maintain and enhance current and future water for Ontarians, and also

for the time to give you some comments from our perspective.

This act should be seen as only one part of an overall water management framework that needs to be somewhat simplified and developed by the province. Not only should this overall framework include acts and regulations such as this one, but it should also include a true watershed evaluation including the impact of the hundreds of thousands of existing private wells out there, not to mention the hundreds of thousands of abandoned wells, about which nobody has any idea in terms of their status.

Cost-benefit, sustainable funding, stewardship incentive programs and a better definition of how this act interrelates and integrates with the others should be taken into account, and hopefully amendments made, before this act is passed.

Thank you very much for your time.

The Acting Chair: Thank you, Mr. Armson, from Ducks Unlimited Canada. Now I'll open it to questions.

Mr. Wilkinson.

Mr. Wilkinson: Great. Thanks, Erling, for coming. On behalf of all of us, Ducks Unlimited does wonderful work. We appreciate that.

Mr. Armson: Thank you.

Mr. Wilkinson: All of our members know that for sure.

It all goes about the watershed—and I think you agree with us that we're right to go on the watershed—and the things that your organization is doing about keeping our water safe. Inherently, the work you're doing is source protection. It's just one of the co-benefits.

You mention recommendation 16, about the need for stewardship. In recommendation 16, it said the Ministry of Agriculture should do that in co-operation with the Ministry of the Environment. But a lot of the work that you do, of course, is with Conservation Ontario and that funding comes from the Ministry of Natural Resources. As we work through this whole issue of money, because ultimately all bills come down to that, I guess it's a question about—in an MOE bill, where the Ministry of the Environment is more the regulator than the funder, we've got other ministries that are more in the funding business, like OMAFRA, like MNR, for example, with conservation and working with your group. Our concern is, until we get the science done, you really don't know how to quantify that problem. It's the same in other jurisdictions as well, as they deal with that.

Do you envision that there would be some type of provincial mechanism and then it could flow through in a coordinated way with whatever ministry is the best one to vector the stewardship so you don't have this cross-jurisdictional—I mean, you guys are used to dealing with MNR and have a very good relationship with them.

Mr. Armson: Yes.

Mr. Wilkinson: Help us. How do we solve this?

Mr. Armson: Okay. Let me help you.

I agree. It's kind of cross-jurisdictional. I know there is the key agency, MOE, but there are other ministries

that directly or indirectly have a role in this, whether it's the Ministry of Agriculture, Food and Rural Affairs, the Ministry of Natural Resources or the Ministry of Health. We've actually initiated discussions with a number of groups, including Conservation Ontario, representatives from the agriculture ministry and natural resources, to start a stewardship network. But the idea and the concept behind it is that no one ministry should be responsible for funding and doing everything. Since this involves a number of these other ministries, it probably would be prudent to have some kind of cohesive organizational structure. There certainly may be one that implements it or regulates it, but in terms of the stewardship fund, that should probably be a contribution from all those affected and appropriate ministries. There might be, perhaps, even a stewardship ministry or funding mechanism that can take all of those portions of funds from all of those different ministries and actually make something decent and substantial in terms of amounts and then implement that in a wise manner, whether it be through a number of organizations, such as ours or conservation authorities and so on, or a new body.

The Acting Chair: Thank you for your answer. Ms. Scott, please.

Ms. Scott: Thank you very much for your input. Ducks Unlimited does a great deal of good work in my riding of Haliburton–Victoria–Brock and, I know, across Canada.

We've talked a lot about the approach in the bill—you called it a big bat and no carrot—and the costs and benefits of it. Just to follow up on Mr. Wilkinson's thing about, how should the stewardship be set up, what ministries are involved—MNR has lots of GIS material—are we all talking and using the information that we have, Conservation Ontario did have CURB, the Clean Up Rural Beaches program. I don't know if you know about that from before; it has been gone for over a decade. Do you see a program like that? Expanded, of course. Do you see that type of approach, more of, "Okay, where's the problem?" and going to the people and saying, "There is a problem," with industry, agriculture or whatever. "It's contaminating the water. How can we work with you to clean that up?" Can you just expand a little bit on the approach that you'd like to see, or talk about CURB if you know it?

Mr. Armson: You mentioned CURB, the beaches program. The programs come and go, which is unfortunate. Typically, they last the length of a session or two, or two or three years, whether it's the Healthy Futures program, which is an agriculture-based incentive program that's past now—but they're short-lived, and by the time groups like conservation authorities or their partners such as us get geared up to try to implement them with a significant number of landowners, the funding dries up and then you have to start all over again. There's a lot of upfront time required to deal with farming associations and landowner associations, so I think the establishment of a stewardship fund that has significant dollars for the longer term, not just a couple of years, is the type of

thing that we need to do. I think that's a viable mechanism and could be easily done. Because after all, we're all really trying to do the same thing. Doing a buffer strip or a wetland restoration project and so on are the kinds of things that we're all trying to implement, but I think we need a little bit more co-operation and cohesion between the different government and non-government agencies.

The Acting Chair: Thank you for your answer. Mr. Tabuns, please.

Mr. Tabuns: Thank you very much for the presentation. I have to say as well that I've been really impressed by the work Ducks Unlimited has done.

One question I have for you: You note the need for funding; others have asked about that. Do you think this act will be effective if funding is not provided in the act, in its implementation?

Mr. Armson: I suppose it will be partially effective, specifically, more in terms of some highly vulnerable municipal intake areas. However, I don't think it will be substantially effective. Without the funding for continuing on studies to really identify vulnerable areas of water throughout intakes and so on, sources, as well as the funding dedicated to working with landowners on a voluntary basis and helping Ontarians instead of coming down with a hammer, I don't think it will be very effective at all.

The Acting Chair: Thank you very much.

ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD

The Acting Chair: The next presenter is from the Ontario Flue-Cured Tobacco Growers' Marketing Board. In the meantime, I would like to remind the members of the committee to keep their questions brief so that the presenters have sufficient time to answer.

You have 10 minutes to make the presentation, then five minutes to answer the questions. You can start any time. Thank you.

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Mr. Chris VanPaassen: Good afternoon. My name is Chris VanPaassen. I'm a farmer from Norfolk county and I'm also the vice-chair of the Ontario Flue-Cured Tobacco Growers' Marketing Board. I am here today representing the tobacco producers of around the sand plains in Norfolk.

In the area of Norfolk county we grow a range of crops, from tobacco, rye and ginseng to a variety of fruits and vegetables. It's actually the most diverse agricultural area anywhere in the Americas. Historically, we've been very responsible in registering for water permits, and continue to use them according to the regulations. We also have a low-water response team working with the conservation authorities and we keep in contact with the producers of the area with regard to water level concerns. This year there have been no advisories. In the past, we've had some very dry summers where advisories were necessary. We have used the water wisely and remain in compliance with the advisories, and. I would

submit that we are doing a great job of controlling the situation without Bill 43.

We welcome the opportunity to present our comments to the committee today. Farmers naturally understand the importance of protecting drinking water because our families, along with our employees who live on the farms, drink the water that comes from our land through our own wells.

We agree with the other speakers today that protecting drinking water is a shared responsibility. As well, farmers need to be treated fairly under this legislation and should not be shouldering the lion's share of the responsibility and cost.

There are a number of issues we believe need to be addressed in order for this legislation to meet its objectives.

The purpose statement is too broad and can be misunderstood. The focus of the act should be the protection of municipal drinking water supplies. We support the suggestions put forward by the Ontario Farm Environmental Coalition, which emphasize the water sources requiring protection, the multi-barrier approach advocated by O'Connor and the need for conservation, among other things.

Another area is the definitions. We are concerned that the definitions of the words "threat," "hazard," "pathway," "exposure" and "risk" are not defined within the bill. These words were used very effectively by the technical expert committee to describe the process to be used to determine whether or not a land use that poses a threat actually constitutes a risk.

We agree with the AGCare submission that the basic premise behind Bill 43 is to prevent "adverse effects" on a municipal drinking water source, but it is absolutely essential to clearly indicate at what point an effect on drinking water becomes adverse. These terms are defined in the science-based framework submitted by the technical expert committee in November 2004. There is no point in adopting a risk management approach without acknowledging that risk can in fact be managed.

The appropriate levels of compensation: This area of Bill 43 is of great concern to all farmers. Subsection 88(6) suggests that the provincial government is unwilling to provide compensation for imposing land use restrictions that reduce the profitability of a farm operation. This section conflicts with section 83, which provides for an appropriate means of compensating a landowner for relinquishing control of their land through purchase, lease or otherwise for public use. We agree with the other agricultural groups that recommend that subsection 88(6) be removed from Bill 43. This would ensure that farmers are appropriately compensated for land use restrictions imposed on their farm operations, and also ensures that municipalities have control of the land required to protect the wells that they own and operate.

The section on permits, inspection and enforcement: We agree with the AGCare position and are opposed to a permit system for agriculture, as proposed in this

legislation. It is our opinion that the "building inspector" model or approach is not suitable for protecting municipal drinking water supplies. The approach to addressing risks to drinking water is too subjective and would require detailed site-specific information relating to the soils, topography and the farming system. A new permit system is unworkable for agriculture.

Bill 43 is also silent on the potential social, cultural and economic impacts associated with environmental protection. It is customary that these elements are considered simultaneously when developing public policy.

We'd like to repeat AGCare's strong disagreement with the proposal in Bill 43 of an interim period in which an assessment report would document required action on the part of a landowner prior to the completion of a source water protection plan. To impose land use restrictions or require modifications on the basis of an assessment report alone constitutes a lack of due process that would result in landowners implementing practices that are unnecessary or inappropriate. There is ample protection currently offered through the Environmental Protection Act to deal with situations that are identified in the assessment report as providing an imminent threat to groundwater or surface water.

The authority of the source water protection committee: The water permit holders of the sand plains of Norfolk and area are very concerned that Bill 43 portrays the source protection committee as subordinate to the source protection authority or the conservation authority. The appropriate role of the source protection authority and conservation authority is to facilitate the process and provide technical assistance. The source protection authority or conservation authority must not be in a position to supplant the authority of the source protection committee.

Tobacco producers have been instrumental in utilizing conservation. Norfolk county was a test area under the water enhancement program and many producers over the years took up the challenge by digging extra water-holding ponds and using other conservation methods that are still being utilized. The producers in our area are leaders in water conservation.

Bill 43 is silent on the importance of water conservation and efficient use. There is, however, a clear link between water efficiency and conservation and the protection of drinking water supplies, and we believe that that should be reflected here.

Finally, the appeal process outlined in Bill 43 is not sufficient for landowners who are impacted by either the proposed assessment report or source protection plan. Given the potential impact of having land designated as "vulnerable" or having a practice deemed to be a "significant threat," it is imperative that landowners have the opportunity to demonstrate to the province if data were not interpreted properly or mitigating factors were ignored.

We all recognize the importance of safe drinking water. That is why we believe more time must be taken to fully hear and appreciate the farmers' concerns. We

want to do our part, but we cannot afford to carry the cost alone.

Thank you for allowing me to speak today. We would like to go on record that we support the presentations of other farm groups such as AGCare and the Ontario Farm Environmental Coalition and agree with their submissions. I'd be happy to answer any of your questions. Thank you very much, Mr. Chair.

The Acting Chair: Thank you, Mr. VanPaassen. I want to remind the committee members that the question period is five minutes. We start with Ms. Scott.

Ms. Scott: Thank you very much for your presentation. I'll try and be brief. You addressed many issues. I agree: Do we need this legislation? Can we do it through the existing legislation? I met with some of your people about the tobacco sand plain down in Norfolk county, the Elgin county, the Brant, the Oxford, etc., and I appreciate you travelling all this way today.

You really can't have any new industry because there's a new moratorium on permits to take water as we speak. So, just how could you move away from your tobacco economy if new enterprises can't drill wells?

Mr. VanPaassen: That's one of the questions we've been rolling over in our minds for the last little while too. As you're all aware, the marketing board has made a proposal to get us out of the tobacco growing industry. We're currently in negotiation with both the provincial and federal government to try to meet the government's commitments under health purposes and just eliminate tobacco growing. But for a tobacco farmer to switch to other crops—most of them tend to use more water rather than less. To get into value-added production of agriculture: We can't do that now in the sand plains of Norfolk because of the moratorium on water use permits. So different sectors of government legislation have put the farmers and all the businesses in Norfolk, Elgin and the sand plains in a precarious position right now.

1230

The Acting Chair: Mr. Tabuns, please.

Mr. Tabuns: Thank you, sir, for making the presentation today. You comment that this bill should be interpreted to protect municipal water. Don't you think it should also be out there to protect rural drinking water and rural water for livestock?

Mr. VanPaassen: Yes, I agree: It should do all of those things. But when I read the act, I'm not sure what it is you're attempting to protect, and I think that's where we need the extra clarity on the definitions and what it is you're actually trying to do. Then, let's go and do that.

Mr. Tabuns: I ask myself the same questions. Thank you.

The Acting Chair: The parliamentary assistant to the Minister of the Environment, Mr. Wilkinson.

Mr. Wilkinson: It's good to see you again, Chris. I enjoyed being in Norfolk county and hearing first-hand about the challenges with the sand plain and the issues that you have there. We've been able to go through a lot of these points over the last couple of days; there's a great deal of consistency.

We haven't really talked a lot about the issue being raised about getting clarity in the bill on definitions. We always have that issue: Do you put it in the legislation? Of course, if you're wrong, it takes a great process to change it, but if you put it in the regulation, everybody's worried because they can't see the regulation until you get the bill. It's kind of a chicken-and-egg-type thing. But what you're saying is that we need to be able to put in the bill the ability to define certain terms, as the technical expert committee recommended, so that you have this metric, I guess, that people could buy into, that a community could understand—things like “hazard,” “pathway” and “exposure.” I suppose this is why we need to have it locally based, because you used the example about where things are sited. In other words, there could be a risk, but the risk is minimal because it's in a double-hulled or double-walled containment tank. Can you flesh out recommendation 2, about where you need to see us go on that?

Mr. VanPaassen: Using a nice, local example, the Norfolk sand plain sits next to the Haldimand clay plain. So you could have a potential risk sitting on a piece of land. You could have a potential pathway. But if you have it on the sand or gravel plain of Norfolk, where groundwater does travel relatively quickly, or you had the exact same thing sitting on the clay of Haldimand where it can't go anywhere, both are a threat, but the one is a much greater risk because there is a pathway that moves quickly. The other one is not a risk because it's already sitting on a clay-lined bunker.

The Acting Chair: Thank you, sir.

FRIENDS OF THE TAY WATERSHED ASSOCIATION

The Acting Chair: Our next presentation is by the group Friends of the Tay Watershed Association. Welcome. You have 10 minutes to make your presentation and five minutes for answering questions. You can start.

Ms. Carol Dillon: Good afternoon, and thank you for this opportunity to make a submission regarding Bill 43. My name is Carol Dillon and I am co-chair of the Friends of the Tay Watershed Association. On the second page of the brief handout that I have shared with you there is a map so that you can know where I'm coming from. In the upper right-hand corner, the light-shaded area is the city of Ottawa, and in the lower left-hand area is the Tay watershed, almost directly north of where we are sitting today.

The Friends of the Tay Watershed Association is a grassroots, community-based organization formed a decade ago to provide stewardship for the Tay River watershed. The watershed is located in eastern Ontario and flows through some of the best cottage country and headwater areas in Ontario. The water flows into the Rideau River, and from there into the Ottawa and St. Lawrence Rivers. The Tay watershed is part of the Great Lakes basin, and since all water flows downstream, what happens in our small, backcountry watershed is very im-

portant to a large number of people beyond our borders. You might say source water protection for many begins in our neighbourhood.

Our watershed is not new to water concerns. In the year 2000, a group of citizens concerned about the future of water in the Tay used the Environmental Bill of Rights to fight for many of the environmental principles that are now proposed in Bill 43. It is satisfying to see the same principles, such as the management of water on a watershed basis and the development and use of water budgets to guide decision-making, reflected in the new legislation. Those principles were right then and they're right now.

Our purpose in being here today is to express support for Bill 43. As a watershed organization, we have welcomed the government's interest and work in source water protection. We believe the proposed Clean Water Act will provide for the long-term health of our communities and our environment. We are especially pleased that the act provides a formal process for identifying threats to the sources of drinking water and establishes local committees to address those threats. We are confident the Clean Water Act will well serve the needs of our people and look forward to its passage in the Legislature.

Our secondary purpose in being here today is to offer some humble suggestions on how we think Bill 43 could be strengthened or made more complete. Since we all hope the Clean Water Act will make a difference both for our generation and future ones, it is worth considering all aspects now. The final page of the handout has a summary of our suggestions.

(1) Provide equal source water protection for private water systems: The Tay watershed itself is the source of drinking water for 12,000 permanent residents, and countless seasonal residents and visitors. Perth, the largest settlement within the watershed, has a population of 6,000 people and a municipal water system—the only municipal system in the watershed. The source of water is the Tay River as it passes through Perth. Another 6,000 people live in the rural parts of the watershed. Their main source of drinking water is private groundwater wells. Thus, as an organization, we are concerned with both municipal systems and private wells: surface water and groundwater. In this, I think we are typical of many rural watersheds. We are confident that Bill 43 will strengthen the protection for water used in the municipal system in our watershed. However, we are concerned that the bill does not give equal attention to the protection of source water for drinking from private wells. Rural areas relying on private wells for drinking present a special case because there is no multi-barrier system for private wells. In rural areas, people drink untreated water, and usually untested water, straight from their wells. For private wells in rural areas, the only barrier is source protection. For that reason, we strongly recommend that the right to source water protection be extended to people who rely on private water systems not only in our watershed but throughout the province. Over two million Ontarians

drink water from a non-municipal source. Bill 43 needs to address their safety too.

(2) Ensure sustainable funding for the program's implementation: Many rural residents are beleaguered with rising taxes and lowered rural incomes. The result is a growing rural backlash against what is seen as government intervention in local or personal affairs. In addition, rural residents must pay for the construction and maintenance of their own wells and septic systems. They fear the Clean Water Act may create additional costs for them. It is essential that there be a sustainable and reliable approach to securing funds for the implementation of source protection plans. No one opposes clean water or source protection, but there is a fear of the personal costs the act may entail.

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(3) Public participation and education: The success of the Clean Water Act will depend on public acceptance and stewardship. Because water is ubiquitous, every citizen must buy into source protection for it to work. Many people in rural areas do not know a lot about the Clean Water Act, but they still fear it. Rural rumours abound, and we must address those. One fear is that the Clean Water Act is the beginning of the privatization of water.

Public education must confront these rumours, build understanding and support, and reaffirm the principle that water is a public resource. It is essential to develop public support through education and outreach programs, as well as through public engagement in the planning and implementation process.

(4) Strong conservation measures and water quantity protection: The name of Bill 43, the Clean Water Act, suggests a focus on water quality but not on water quantity. In fact, the two must be considered together. It is important that this act work effectively to protect both water quality and quantity. The act should promote the adoption of conservation measures and prevent the depletion of water resources.

(5) Adoption of the precautionary principle: As a grassroots environmental organization, we support the use of the precautionary principle and would like to see it inserted into the Clean Water Act as a guiding principle. As Justice O'Connor wrote in the Walkerton report, "Decision-makers should err on the side of caution." The precautionary principle provides some comfort in uncertainties.

(6) Commitment to the Great Lakes and the Great Lakes agreements: The Tay watershed is part of the Great Lakes basin, and thus shares an interest in and feels a responsibility with those water bodies. Because 80% of Ontario's drinking water comes from the Great Lakes, it is essential that the province use the Clean Water Act for protection of source water in the Great Lakes as well. Source protection measures should be integrated with existing Great Lakes programs and agreements. Our efforts at the local level are rendered useless unless similar strong stewardship and protection is provided for the entire Great Lakes basin.

(7) Meaningful involvement of First Nations, Metis, and Inuit people: The First Nations community within the Tay watershed has shared its traditional ecological knowledge and perspectives on water with the Tay watershed community. We strongly believe that First Nations, Metis and Inuit people and their governments have a critical role to play in the source water protection framework. In its current form, the act does not include provisions related to drinking water systems on reserves, nor does it in any way include First Nations people in the source protection process. The federal and provincial governments should support the ability of First Nations people to be full participants in source protection planning and implementation, in addition to allocating appropriate resources to facilitate meaningful involvement.

We see the Clean Water Act not as an end but as a beginning. It joins other legislation which serves us all well. Water is a precious resource. It is life-giving. In the Tay watershed, we have no water problems, but we are looking to the future. We believe our watershed is similar to many other watersheds throughout Ontario that will be affected and enhanced by the Clean Water Act. We look forward to the passage of Bill 43 and working with the various stakeholders for the protection and betterment of Ontario's waters.

The Acting Chair: Thank you for your presentation. Now to questions. Mr. Tabuns, please.

Mr. Tabuns: Thank you very much for that presentation. You mentioned funding in your presentation. I think it's an important component of a bill that actually delivers the goods. We all have to think about where that funding will come from. I think it makes sense that the major water takers in Ontario that benefit from this kind of legislation would actually pay for water-taking. Is that something that your organization would support?

Ms. Dillon: I think they would, although there is dissension on that point, and I'll be honest about that. I think there is a fear that it's a slippery slope and that once charges for water begin in one place, it's going to end up that individual water—in other words, private citizens will also have to pay for the water. So I can't say that we have resolved that question. However, the question is, where is the money going to come from? What we do agree on is that it should be a shared cost among all citizens, in other words, but we would like to see it managed by the province rather than downloaded to municipalities.

The Acting Chair: Thank you for your answer. Mr. Wilkinson, please.

Mr. Wilkinson: Thank you for coming, Carol. At the top, just so we're clear—because you raised an issue about a rumour—the minister has said this, the Premier has said this, and I'll say this to you: We are opposed to the privatization of water in the province of Ontario. But thanks for raising that issue because it goes to the issue of the things that are going around in the Tim Hortons, and are they based on fact.

You raised a good issue about the need for conservation. A lot of people don't know that right in the

bill, as it's drafted, for every watershed you have to have a water budget. In other words, you have to determine how much is coming in, how much is going out, figure out who is using it, to make sure, based on that science, that you can actually take the next step and make sure that you're using conservation. A lot of people just assume it's going to be there. As our friends from Norfolk county can tell you, they're getting up against the fact that in their part of Ontario the water is not nearly as plentiful as it is in the Tay.

As the member for Perth county—not for the town of Perth; I get a lot of mail for your member, actually—what I wanted to talk about was the concept that people don't want to have it imposed. But if we go to private wells and say, "Now you have to be part of source water," would we be better to have a situation where people who are on private wells come and say, "We want to be included," instead of imposing it from top down, that if the municipality didn't want to include it but the citizens did, we would give the minister the ability to designate an area of people?

Ms. Dillon: I think a parallel situation is the testing of private well water. MOE has a very good system in one way in that they provide free well testing. You can get it tested every day if you are prepared to go through what it takes. Where we live, what it takes is that you have to have a sample and it has to be submitted within, I think, 24 hours. You have to take it and drive to the nearest public health office, which is in Smiths Falls, and then you wait three days, which could be a serious three days if there's a problem. I think there are many things that could be done for private well owners already. For example, easier testing would be one thing; not having to drive a sample. That's available, but very few people take advantage of it because it's too cumbersome.

So I think there are many things that could be done without becoming overly regulatory. In other words, people would choose to do that themselves, but we have to make it somewhat easier, and that's where public education comes in, I think.

The Acting Chair: Ms. Scott, please.

Ms. Scott: Thank you very much for your presentation. You've done a very thorough job. I'll just pick up on the education factor. Do you think we should do more in our public schools—starting with education, conservation, clean water, what it takes—because we need to involve everyone in getting clean water, right?

Ms. Dillon: I certainly agree with that because that is one of the things that the Friends of the Tay Watershed Association has done. We are trying to create a new generation of people who respect the water within the watershed in which they live, and if they move away we hope they will take those values with them. So we do a lot of public education in the schools. We also do public education with adults, but most of our programming is in that direction. You can always find places in the curriculum where it can be included in Ontario. We aid teachers with materials. We make it easy for them to include it.

Ms. Scott: Good. Thank you very much for doing that and for coming today.

The Acting Chair: Thanks, Friends of the Tay Watershed Association.

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LENNOX AND ADDINGTON FEDERATION OF AGRICULTURE

The Acting Chair: Our next presenter is the Lennox and Addington Federation of Agriculture.

Mr. Kaiser: I didn't have a hat to change but I did change my name tag. There was somebody who was probably supposed to be here but had to back down at the last minute out of personal conflict. So, as a board member of the Lennox and Addington Federation of Agriculture, I agreed to step forward and jump on the opportunity to speak a second time here this morning.

I'd like to return to the concern dealing with water efficiency and conservation, a concept that also should be considered as water use education. This stems from my personal philosophy that animal and plant production should form a nutrient cycle. What that means is that animal manure should be used as a nutrient source in the production of plant proteins, and that should include the return of municipal sewage sludge, or biosolids, to the lands where our foods are produced. The problem with those biosolids is not the nutrients they possess but rather the other products that are flushed down the drain with them.

That said, I believe that education about water usage and the like is equal to education about conservation efforts.

Ms. Scott asked me earlier about the perception of the act within agriculture and the local community, and I believe that, generally speaking, the farm population has a fear the government will ultimately regulate us into oblivion. That suggests a fairly confrontational stance to begin with. To stay with the perception point, public perception is that a farmer was a contributor to the Walkerton tragedy of 2002, when in fact that farmer was the only one who had a nutrient management plan, which is a preventive measure mitigating risk to the environment.

I'm a bit of an optimist and I do believe that the Ministry of the Environment wants this act to accomplish its goals, as we all do. In that vein, as we approach the adoption and implementation of the act, the public needs assurance that the MOE's approach will be not confrontational but rather that the MOE will approach individual landowners with the goal of assessing threats and hazards with the intention of working with the landowner to solve any problems, mitigate risks and hopefully control threats to a reasonable and acceptable level. This would require that the act reference that funds would be available to adopt new practices or management processes, something like a stewardship fund, to accomplish these goals.

Another point that came up—again, you didn't get a written submission because I've had to do this at the last

minute, drawing on discussions at local board meetings—was the source protection committees. We're locally very concerned about the inclusion of significant numbers of agricultural representatives on the board. Other affiliations notwithstanding—Mr. Wilkinson, you referred to municipal officials. In my municipality, none of the municipal officials are agriculturally based, even though we form probably two thirds of the municipality. Regardless of what other positions they might have, the source protection committees need to include more than one minimum seat for agriculture because we would comprise so much of the land base that will be affected by this.

Locally we've contacted the Cataraqui Region Conservation Authority as well as Quinte Conservation, beginning dialogue about the formation of these committees. We've suggested that the use of a working group to represent all of the federations locally, reporting to single or two seats at the committee level, might be acceptable.

Finally, there's been a lot of discussion today about funding and where it should come from. Personally speaking, and from the discussions around the table, where it comes from is irrelevant; it all comes from the province of Ontario. There may be a situation where water-taking funds are collected in some instances, but to say that it comes through the Ministry of Education, Ministry of the Environment, Ministry of Agriculture is kind of irrelevant. That's just a detail about who administers it. The fact is, it's a budgetary item for the province of Ontario and it needs to be included.

In conclusion, we all want to ensure the safety of our water supplies and to provide for these supplies to continue, and to continue to be safe for coming generations. As a farmer, a steward for the land, it is my goal to leave my land better than how I started with it—and believe me, my father set the bar very high.

This act has the right objective, provided that the amendments presented here today are given due consideration to ensure that it follows the right approach.

Thank you again for this opportunity here in Bath today.

The Acting Chair: Thank you, Mr. Kaiser. Now we start with the questions. The parliamentary assistant to the Minister of the Environment.

Mr. Wilkinson: Thanks for coming back again, Max. As a farmer in this area, do you find the relationship that you have with the local conservation authority pretty positive, as opposed to confrontational?

Mr. Kaiser: I think in this area it's positive. We have had good uptake, if not usage, of the healthy waters and healthy futures programs and things like that. The local land stewardship committee is also very agriculturally oriented and inclusive and enhances that relationship with the conservation authority.

Mr. Wilkinson: I ask because it's always that question of the alternative. I hear the point about the compensation at the provincial level, but if you're not delivering it locally with local people, whatever you call

them, you actually have this person coming from away, right? So with the idea of using more of the conservation authority type of model where the people are local and live in the community, you'd get better buy-in than if you had a bunch of officials descending. Whether it's an industry, a farm or a school, wherever they go, they're not from that community. So I think that's the idea. We got the sense from O'Connor that you're better to have local—even when you're dealing with this, that's kind of local, which a conservation authority is. You'd say, "We're all in the same watershed, so there's a reason for the person to be there." The alternative would be kind of MOE-driven.

As long as you've got technical committees supporting the people on the board, so that you can't have everybody on the board, but they have to have these working groups, so if you are representing something, you're representing an interest, and all your farm groups could come or all your industrial groups could come, all the municipalities could come, that would work as long as that's in there. Right?

Mr. Kaiser: When I referred to the source protection committees and having that working group of farmers in the instance of the agricultural seat, this county has a single federation of agriculture, but we have two conservation authorities in this county—a minimum of two. Actually, I think there may be three up to the north. Anyway, the point is that where a conservation authority or a watershed encompasses more than one agricultural area or zone—in the case of the federation of agriculture, we have our bi-county—no one county should be solely represented. They should all have representation through the working group and then ultimately report, so that it's local but it's local across the watershed inclusively.

Mr. Wilkinson: Great.

The Acting Chair: Thank you. Ms. Scott, please.

Ms. Scott: Following up on that, the composition of the source protection committees, do you have any idea what you'd like to see? If it's 90% agriculture in your region, what would you think would be a fair number of people to sit on the board? Just roughly; you don't have to tell me specifically.

Mr. Kaiser: Well, to get back to the whole working group idea, it should be representative of the watershed in that if there are several small municipalities and a lot of agricultural land base, they should be somewhat equal. But where the number of seats limits who all can be involved, that's when you go to the working group approach where there can be a second sort of subcommittee that reports through those few seats at the actual committee level so that all the area can be represented, be it the municipal sector or the agriculture sector or the industry sector, at the board level, but they all get their voice at the working group.

Ms. Scott: Okay. So you'd like to see that a little bit more enshrined in the legislation to guarantee fairness?

Mr. Kaiser: Yes.

The Acting Chair: Mr. Tabuns, please.

Mr. Tabuns: Thank you for jumping into the breach.

I asked this question earlier, and I'll ask you: Should this act protect rural drinking water and rural water for livestock operations?

Mr. Kaiser: The act as it's written now is certainly geared more towards municipalities. They're the larger individual takers in the rural setting. I mean, all water should be protected. Does it need legislation? There's probably legislation out there anyway that already protects it. Does it need to be written again? I don't think it would hurt. It's that multi-barrier approach that we spoke about. But our populace here in Lennox and Addington is spread out over such a large area, it's hard to pick on a point source to say, "That needs to be cleaned up," or "That needs to be cleaned up." In fact in the town of Napanee, which is a little north of this town, we draw off of Lake Ontario.

I'm not sure if I answered your question correctly.

Mr. Tabuns: You've meandered around it.

Mr. Kaiser: I've meandered around it. I'm trying to be political.

Mr. Tabuns: Then you've got the technique down really well.

The Acting Chair: Thank you very much.

On behalf of the standing committee on social policy, I want to thank all the presenters as well as everyone else who took time out to be here today. I also want to thank all the committee members, the research and analysis department, the Hansard group and the translation group.

Mr. Wilkinson: Mr. Chair, on behalf of all the committee, I believe this is the first time a standing committee of the Legislature has been in Bath, and we just want to put on the record what a warm reception we've all received visiting this wonderful community.

The Acting Chair: I also want to thank the organizers of St. John's Memorial Hall for giving us this hall to have this hearing. As Mr. Wilkinson has said, we definitely had a good time here.

We adjourn the meeting and we again meet in Peterborough tomorrow, August 25, at 9 o'clock.

The committee adjourned at 1300.

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Friday 25 August 2006

Journal des débats (Hansard)

Vendredi 25 août 2006

**Standing committee on
social policy**

Clean Water Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur l'eau saine

Chair: Shafiq Qaadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Friday 25 August 2006

Vendredi 25 août 2006

The committee met at 0907 in the Best Western Otonabee Inn, Peterborough.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr. Trevor Day): Honourable members, it's my duty to call upon you to elect an Acting Chair.

Ms. Kathleen O. Wynne (Don Valley West): I'd like to nominate MPP Arthurs to chair the meeting.

The Clerk of the Committee: MPP Arthurs has been nominated. Any further nominations? Nominations closed. Mr. Arthurs, you are now the Chair.

The Acting Chair (Mr. Wayne Arthurs): Mr. Leal?

Mr. Jeff Leal (Peterborough): I have to step out at about 9:15, and I should be back by 9:40. I'm under a family thing I've got to look after.

Mr. Chair and my colleagues, first of all, on behalf of Her Worship Mayor Sylvia Sutherland and my colleague Neil Cathcart, the warden of Peterborough county, I'd like to give everybody a very warm welcome to the riding of Peterborough. It's always a privilege to have a standing committee come to one's riding to provide an opportunity for citizens to participate in the democratic process of a committee, and here dealing with this particular piece of legislation.

The Acting Chair: Thank you, Mr. Leal, as the local member. We appreciate the welcome. I know the committee is pleased to be here. They have had a fairly long week. I've been here for only two days, but I know other committee members have spent the week around the province.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Acting Chair: Welcome to the standing committee on social justice, Bill 43, Clean Water Act, public hearings.

We do have a full day of deputants today, witnesses before us, so we're going to keep pretty strictly to our

schedule, as best we can: 10 minutes for the deputations. We will let you know when you have a minute or two left, as the case might be. For the benefit of the members of the committee, with five minutes for questions and an opportunity for the deputants to answer, we're going to stay pretty tight as well, since we're sharing the time among all three parties. So there's only about a minute and a half for both question and answer. If your question takes too long, there won't be an answer.

LINDSAY AND DISTRICT
CHAMBER OF COMMERCE

The Acting Chair: Can we start, then, at this point in time? The first deputants this morning: Lindsay and District Chamber of Commerce.

Welcome. We'll let you start at your leisure. It would be helpful, though, if you would identify yourself, those who are presenting, for the purposes of our Hansard.

Ms. Amy Terrill: Good morning. I echo MPP Leal's comments of welcoming you to the Kawartha Lakes this morning. My name is Amy Terrill. I'm the general manager of the Lindsay and District Chamber of Commerce. With me is Val Harris, the president of our chamber. Thank you for allowing me to speak to you today about Bill 43, the Clean Water Act. I have brought a written submission to provide some additional detail, and that has been given to your clerk.

The Lindsay and District Chamber of Commerce represents over 7,000 individuals in the city of Kawartha Lakes through almost 600 businesses. Our members are engaged in every industry, including manufacturing, service, retail and agriculture. As you know, Lindsay is in the heart of the Kawartha Lakes, an area dotted with over 250 lakes and rivers, and it is precisely this environment that has drawn many people to our area to make it their home.

While our members respect your efforts to provide source water protection, they are worried about the potential implications of Bill 43 on their ability to contribute to the local economy.

I'd like to focus my comments today on three specific areas of concern: the cost burden for land users, the threat to agricultural sustainability and the additional down-loading on municipalities.

First of all, it is the fear of our members that Bill 43 will put some businesses and farmers at a competitive

disadvantage. While one business that has been operating under currently acceptable standards is unaffected by the legislation, another will find itself burdened with additional costs, simply due to its proximity to a water source. I think you would agree that the benefits of source water protection will reach all Ontarians, and yet in the process of establishing a new standard for pollution prevention, some land users will find their current activities no longer acceptable. These land users should not bear the sole cost of reaching this new benchmark.

In January of this year, the Water Well Sustainability in Ontario report stated, and I quote, "Land users need to be assured that any alteration in land use beyond" normal "due diligence will be compensated as the alterations are done in the interest of the public good." A few land users should not be forced to pay for the good of all. Fair and equitable compensation must be established for land users affected by Bill 43 so that we can continue to enjoy their contribution to our economy.

Our second concern refers to the threat to agricultural sustainability. As Ontarians, we want to know that our food is grown within acceptable standards. We have all heard the slogan "Farmers feed cities." In the city of Kawartha Lakes, agriculture is indeed one of our largest industries. Our farmers are feeding Ontario's cities. And with today's concerns about food quality, the need to protect our ability to grow our own food has become even stronger.

The farming community has struggled in recent years as a result of such things as nutrient management, with its associated costs, and mad cow disease, among others. The executive director of the GTA agricultural action plan, Elbert van Donkersgoed, recently explained at the Association of Municipalities of Ontario conference that what he calls the "treadmill to ever-lower prices" has caused the net farm income to dwindle to zero over time. He explained that while the prices have gone up for the consumers, the growers have not received a similar increase in revenue. In fact, according to van Donkersgoed, farms are now staying afloat primarily as a result of off-farm income. Business farms are in significant decline. This is borne out in our own municipality, where an estimated 50 small farms went out of business in 2005.

Bill 43 threatens to create an additional cost burden for some farmers at a time when they can least afford it. Farmers meeting today's standard of due diligence should not be penalized for a change in best practices that is for the benefit of all Ontarians. Fair and equitable compensation must be established in order to ensure that our agricultural producers can continue to feed the province.

The final concern about which I would like to address you today is the additional downloading on municipalities represented by Bill 43. Sections 42 to 73 of the bill describe broad enforcement responsibilities for municipalities, without a similar allocation of funding. In order for a municipality to comply, permit inspectors must be hired for the review of applications and risk assessment reports, and other activities associated with the permitting process. The Association of Municipalities

of Ontario has estimated the costs of providing these services as substantive.

Evidence is mounting that the property tax system across Ontario simply cannot keep up with current demand. Premier Dalton McGuinty stated so much with his announcement at the AMO conference regarding a joint review on how municipal services are paid for and delivered, specifically in the areas of housing, health and social services.

The municipal fiscal imbalance was the key topic at last week's AMO annual conference. Presenters, including economics professor Harry Kitchen of Trent University here in Peterborough, demonstrated the unsustainability of the current funding of municipalities. Kitchen showed that Ontario has the highest property taxes per capita in relation to provinces in Canada and that in all other provinces, social services and housing are paid for by the provincial governments. In our own municipality, the city of Kawartha Lakes' infrastructure is deteriorating and services barely keep up with demand. Our municipality is having difficulty maintaining the status quo, let alone meeting residents' demands for higher levels of service. Let's not make the situation even worse.

Source water protection is a provincial responsibility. Our municipality as well as others across the province cannot absorb these additional costs. Municipalities must be provided with operational funding to cover the costs associated with enforcement of these guidelines.

In summary, Bill 43 is a major concern to the members of the Lindsay and District Chamber of Commerce, and our concerns can be addressed as follows:

(1) Establish a fund for compensation in order to assist landowners in a timely fashion, whether they are farmers or businesspeople. This fund must be governed by a clear set of rules so that it is distributed fairly and equally. This will help ensure that no business is forced to close as a result of additional costs brought on by the Clean Water Act. It will also prevent our farmers from finding their net farm income dropping farther below zero.

(2) Municipalities must be given the appropriate level of funding in order to meet their responsibilities within the legislation and so as not to further widen the fiscal imbalance. Property taxes are already subsidizing services which have no relation to property.

We should be making every effort to strengthen our provincial economy to ensure our continuing ability to compete on a global scale. Bill 43, as it is currently written, would prove detrimental to these efforts as it will create an environment of uncertainty and will harm the abilities of some businesses and farmers to remain competitive. A healthy economy and a healthy environment should not be incompatible. It is a matter simply of finding the appropriate balance and assisting all those impacted to meet the new provincial standards.

Thank you for the opportunity to speak to you today, and I would be happy to respond to any questions.

The Acting Chair: Thank you. We'll begin the questions with the official opposition.

Ms. Scott?

Ms. Laurie Scott (Haliburton–Victoria–Brock): Thank you very much, Amy and Val, for coming here today. I'd also like to welcome everybody; you're not in my riding, but you're close to the boundary. Amy and Val represent a large part of my riding with the Lindsay and District Chamber of Commerce.

You touched on a lot of good points, Amy, and what could happen: financial hardship for our farmers, our municipalities and our communities. The property tax system across Ontario—there's no question—it just cannot afford to pay for that. So I just wondered if you could comment. If Bill 43 goes through without some serious amendments, what would be the most cost-effective way? I know AMO has brought up some interesting points, but if you could just elaborate a little bit on the cost and the impacts.

Ms. Terrill: I think the principle there, as I said in my statement, is that these changes would be for the benefit of all Ontarians, so rather than force the burden on individual landowners or farmers, or individual municipalities, you spread it across the entire provincial population base, and obviously, in the most cost-effective manner is really the key.

Ms. Scott: Thank you very much.

The Acting Chair: Mr. Tabuns.

Mr. Peter Tabuns (Toronto–Danforth): Thank you very much for coming in and making that presentation. We've been listening to a lot of people this week. I think your answer may be consistent with theirs. If in fact there were a funding component to this act, would that make a substantial difference to support or opposition in rural Ontario?

Ms. Terrill: Absolutely.

Mr. Tabuns: Fine. Thank you.

The Acting Chair: Mr. Wilkinson, the parliamentary assistant to the Minister of the Environment.

Mr. John Wilkinson (Perth–Middlesex): Welcome, Amy and Val. Thanks so much for coming. Following up on that point, two things: We're getting a lot of testimony in rural Ontario—and I am a member in rural Ontario—that if there were a stewardship fund based on the cost-share principle, and we have plenty of testimony that says that works as long as you don't have any net economic disadvantage, that would be well received. In regard to municipalities, we have, as you mentioned, at AMO, this new negotiation going on between the municipalities and the province about responsibilities and costs. So your recommendation would be that Bill 43 should be included at that discussion table that's going on right now between the two?

0920

Ms. Terrill: It wouldn't hurt. I think that review, unfortunately, has a very long time frame, and I'm sure some municipalities may argue that the challenges they are facing today are urgent. But indeed, I think you have to look at things comprehensively, so if this is a new piece of legislation that will impact that funding arrangement, then it should be considered in conjunction.

Mr. Wilkinson: We have about another three years of scientific work that has to get done before we actually get around to the implementation of this, so this is a framework to get this started. But you're right: It's about 18 months. But I would think that would be done before we actually get into direct municipal costs.

Ms. Terrill: And it seems to make sense.

Mr. Wilkinson: Okay, thanks.

The Acting Chair: Thank you, Amy and Val, for the presentation this morning.

TAY VALLEY TOWNSHIP

The Acting Chair: Our second deputant this morning is Tay Valley Township. Though I fear being repetitive, I know people will be coming in during the course of the day. There are 10 minutes for your presentation. If you could identify whoever is presenting for the purpose of our Hansard, and there will be up to five minutes of questions divided among the three parties at the end of your presentation.

Ms. Maureen Towaij: Thank you. Good morning. My name is Maureen Towaij. I am a councillor with Tay Valley township. I'm joined today by George Braithwaite, who is the vice-chair of Conservation Ontario; Sommer Casgrain-Robertson, who is with our local source protection region; and my colleague Mark Burnham.

Tay Valley township is in Ottawa's backyard. We're a rural area, an economy largely based on recreation, tourism and agriculture. We're also a very well populated area, an area valued for its many lakes and natural beauty.

Our municipality is also home to many surface-rights-only properties, and that's based on historic mica mining that took place 100 or 150 years ago. These properties carry a legacy of abandoned mines and often unmapped mine hazards. Surface rights properties are properties where the property owner owns the surface but the crown owns the mineral rights based on historic forfeitures. Tay Valley isn't unique in this regard. There are surface-rights-only lands that exist throughout the province of Ontario. Property owners are normally unaware that they are surface-rights-only, because lawyers' searches are 40 years only and the forfeitures could have happened long before that. As such, these properties are subject to the provisions of the Mining Act of Ontario.

We're here to address two key concerns with you today: firstly, protection of non-municipal water supplies, and secondly, conflicting legislation; namely, the Mining Act of Ontario.

If we think back to Justice O'Connor's part two recommendations, the intent was very much protection of water for all Ontarians. The proposed act, as it now stands, only protects people whose water is from a municipal or private treatment system. While it is our view that non-municipal systems should remain the responsibility of the owner, it must be recognized that protection of source water resources is often beyond their control. Given the provisions of section 78 of the Mining Act, this creates a serious omission.

By way of background—and I'll probably go through this pretty fast—if we think of Ontario, an estimated three million people depend on well water or surface water. For Tay Valley township, there are 11,500 people in that category; for our source protection region, 44,000 people. There is a map, an attachment in your package, which shows the relationship of the areas that are designated for protection versus this distribution of water wells.

For surface-rights-only people, in section 78 there are major concerns. I'm going to quote from the Ministry of Northern Development and Mines. It's a publication titled Facts about Mining in Ontario. It says within it, "The Ontario Mining Act provides a statutory right to stake mining claims on crown mineral rights and to conduct assessment work on the mining claims even if the surface rights are privately held." So, specific to this section 78, which is on assessment and exploration, and it's in your package as an attachment, there is no requirement to post on the Environmental Bill of Rights. It does not fall under part VII of the Mining Act. There are no legislative or regulatory controls requiring conservation authority or municipal notification or approval. And subsection 78(1) provides for the holder of the mining claim to, upon 24 hours' notice to that property owner, enter the property for the purpose of conducting assessment work. They can excavate up to 1,000 tonnes of overburden, surface-strip overburden over an area of 10,000 square metres or a volume of 10,000 cubic metres, or surface-strip overburden up to 2,500 square or cubic metres within 100 metres of a body of water. It's only when these thresholds are exceeded that EBR posting is required. Clearly, given that the purpose is to take mineral samples and drill and so on, the potential for contaminants to an aquifer through bedrock drilling is pretty high.

It isn't theoretical. In Tay Valley township, our landowners have been subjected to many mining claims in the recent past. A number were overturned through the efforts of and a lot of legal costs to landowners. But there are claims that have been in place for 19 years subject to constant assessment work. Properties are stripped, trenched, drilled and left, just like that. Ratepayers have come to our township around help to address a broad range of issues associated with the Mining Act. We have asked for an investigation, and you'll see within your package a recent letter to Premier McGuinty.

Going back to water for our region, the Renfrew County-Mississippi-Rideau Groundwater Study, a 2003 report, stated, "Over 90% of the study area is mapped as high vulnerability because of the predominance of shallow overburden. The thin soils provide minimal protection to underlying bedrock aquifers." While section 96 of the proposed Clean Water Act outlines how a decision will be rendered if provisions in the act conflict with the provisions of another provincial act—i.e., that with the greatest protection of water prevails—it does not address conflicting activities which are exempted from approvals in another piece of legislation. The provisions

of the Mining Act that place source drinking water at risk on surface-rights-only properties are an example of this and simply unacceptable, particularly when you consider the rigorous reviews, approvals and permitting processes that are required by provincial legislation on all other types of development, including temporary land use. It's a reasonable expectation, in our view, by these surface rights property owners that their drinking water should be protected and that they would look to the Clean Water Act to ensure this.

Relative to Tay Valley township council, we have been active. Over the past couple of years we've led various ministerial delegations trying to have a broad range of issues addressed by the Ministry of Northern Development and Mines. The reality is that the minister refers to the minister's Mining Act advisory committee. It's largely made up of mining interests. To date, regardless of our efforts, there has been absolutely no legislative change. We have brought the issue of section 78 and what is allowed to the minister's attention.

It's clear to us that the protection of rural source drinking water cannot be left up to MNDM and that an amended Clean Water Act which protects rural source drinking water is the best solution, particularly if it forms part of an integrated provincial water management system.

Our recommendations, therefore, are:

(1) That the Clean Water Act be expanded to include protection of rural non-municipal source drinking water resources in those areas which are designated as surface rights only.

(2) That the Clean Water Act require mandatory notification of the appropriate conservation authority source water protection committee of all mining claims upon the date of filing, as well as all proposed assessment work currently permitted under section 78 of the Mining Act.

(3) That the environmental impact of the proposed assessment work, particularly as it relates to source water, be carried out under the authority of the source water protection committee with jurisdiction for that area prior to any commencement of mining assessment work.

(4) That when the environmental impact is determined to be detrimental to source water protection, subsection 96(1) of the Clean Water Act prevails.

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In closing, I just want to comment that Tay Valley township certainly supports the Conservation Ontario submission. I'd also comment that our work to date at the political level has been broadly supported by the wardens of eastern Ontario, by Lanark county and many others, as well as Conservation Ontario.

We thank you for the opportunity to bring to your attention what we see as a significant omission within the current Clean Water Act, and we'd be pleased to take your questions.

The Acting Chair: Maureen, thank you. We'll begin our questions with Mr. Tabuns.

Mr. Tabuns: Thank you, councillor. That was an excellent presentation. This question has come up before,

and I'm sure the parliamentary assistant will address it. He has said that in fact the act, as written, does provide that kind of protection, that primacy to the Clean Water Act. Others have disagreed with him.

In your assessment, and I assume you've had legal counsel review this, does the act, as written, provide you with the protection you're seeking?

Ms. Towaij: No.

Mr. Tabuns: Fine. That's a good answer. It's pretty clear.

The Acting Chair: Mr. Wilkinson?

Mr. Wilkinson: Just following up from my friend Mr. Tabuns—and, councillor, thank you so much for coming—it is true that the act has primacy, but your issue is, what's the good of primacy if it's after the fact?

We've said in the act that municipalities "may" extend source water protection study and work and assessment reports on areas outside of where they get their municipal drinking water because they may get it in the future, or there might be a vulnerable population, like a nursing home on a well, and everybody with common sense would say, "Well, you'd better make sure." But what you're saying in this area, particularly with these surface-right-only properties, is that's exactly where the Ministry of the Environment should be coming in and ensuring that before any of this activity happens, it has to be in compliance.

Again, the whole idea is to make this local, but what you'd like to see are amendments, then, to the bill to make sure that the act would have primacy before the fact, not after the fact.

Ms. Towaij: Absolutely, John. The loophole right now is section 78 of the Mining Act. There are no controls. It is under the radar. There are artful words written by the Ministry of Northern Development and Mines but, when you check the detail, it's a statutory right and there are no controls. As a municipality, we are not advised, we're not notified of a mining claim—zero—nor is the conservation authority. That's very significant, in our view.

Mr. Wilkinson: Good. Thanks for coming in.

The Acting Chair: Ms. Scott?

Ms. Scott: Thank you very much for appearing before us today. I have to say, this is the first time in our fifth day of committee that we've heard about the Mining Act and its being left out. So I really appreciate that input. I would ask you to submit amendments to the clerk when the bill goes for clause-by-clause September 11 and 12. There's a deadline of September 6 that they need to be submitted by, so that we can discuss amendments when we go clause-by-clause.

You talked about working with the conservation authority in the township. Do you have any idea of roughly the costing that may be involved with the Clean Water Act as it stands now? Have you had discussions?

Ms. Towaij: I don't at this point, and I'm looking to my colleague and to Sommer from our source protection region. We do not know at this point.

Ms. Scott: But there's going to be quite a bit of cost involved. What would you like to see changed in the funding? Right now, it's downloading to the landowners and to the municipalities. Would you like to see something in legislation in respect to the funding?

Ms. Towaij: Yes. I'll turn to Councillor Burnham here.

Mr. Mark Burnham: I agree with the previous presentation that certain landowners are going to have to accept the cost for the benefit of all, and there's something fundamentally wrong with that for me.

The other factor is, as a rural municipality with no water treatment facility, I don't see that our costs are going to be huge as the act stands now. We have one old-age home, but it's not on a well. It's on a municipal system because it's right on the boundary of Perth.

Our concern is more the general rural area, with the growing population. We don't have a great many subdivisions right now, but our neighbouring townships do. When the four lanes to Carleton Place are completed, we will have subdivisions. That means high-density use, high water-taking etc, so we see our aquifers and surface water as highly vulnerable at the moment. To that end, we started the septic re-inspection program before anyone else in rural eastern Ontario, and we are very vigorous about our zoning setbacks.

The Acting Chair: Thank you for your response. Our time for questions has expired. Thank you for your presentation.

COUNCIL OF CANADIANS, PETERBOROUGH AND KAWARTHAS CHAPTER

The Acting Chair: Next up this morning: the Council of Canadians, Peterborough and Kawarthas chapter.

Good morning.

Mr. Roy Brady: Good morning. Thank you to the Chair and committee members for this opportunity.

The Acting Chair: If you would identify yourself, sir, just for the benefit of Hansard so it's appropriately recorded.

Mr. Brady: Oh, I'm sorry. I'm Roy Brady, chairperson of the Peterborough and Kawarthas chapter of the Council of Canadians.

There are merits in the Clean Water Act. It obviously has a clear process, some local participation, legislative teeth and the mention of the primacy of the most protection for water sources. This is a long-awaited bill.

I just have a couple of brief recommendations before I get into the meat of my presentation. I would recommend that the medical officer of health be on the local source protection committee. In looking at the first step of the source protection committee, the terms of reference—that is in danger of being too long. I wonder if that could be shortened. I also would like an answer as to what happens regarding a harmful activity to water that's engaged in before this act comes into place, occurring right now perhaps. And when you mention "property," "person"

and "individual," are you also extending that to a corporation?

Anyway, throughout this presentation, the premise is that water is a public trust and it's not-for-profit and it is to be protected publicly.

I attended a workshop about two and a half years ago right here in Peterborough on water source protection. A number of stakeholders were invited, and I invited myself. At the very first, we were told that we would have certain activities, but don't talk about funding. Well, our group broke that and we talked about funding all day. It was quite clear: That was the problem. So I want to bring that up today, and it has been brought up already.

There really has to be a real commitment from the Ministry of the Environment to carry out this particular act. You're going to have to boost the dollars beyond the regular amount. I'm aware that there have been cuts to the Ministry of the Environment, beginning in 1995 and extending to at least four years ago.

We also insist that public employees conduct research. We also feel that the ministry has to have the power and the numbers and money to be vigilant and have the oversight to ensure that they are providing the greatest protection to the quality and quantity of water. There are bound to be some potential industrial threats from improperly stored solvents and old leaking landfills and corroded underground storage tanks, and these are bound to be located during this process, and we feel that the Ministry of the Environment has to be strong enough to look after that.

Government also has to come through. I think they have to provide more money than has been announced. My understanding is that they're saying there's \$67.5 million out there: \$51 million for technical studies over the last five years and \$16.5 million for conservation authorities.

You're also very vague on hardship cases, and there will be some—some, probably in this room—in the future. You've got to expect legal costs. You've got to expect some obstacles you didn't predict. This particularly could happen if this particular act is well applied.

So, the effect on municipalities: We have the previous downloading, and now we have increased municipal obligations, which will lead to new expenses. There will be the ordering and monitoring of risk management plans. Permit officials and inspectors will have to be hired and used. There will be staff time for consultation, records, meetings, travel, local appeals. The municipalities will be identifying, assessing, evaluating, taking action, doing local enforcement. There are bound to be future development issues popping up. From these pressures, you're bound to find in the future that financial help will be needed for local developers, landowners—you're going to hear about that soon—and individuals, particularly if an area of vulnerability shows up that wasn't known or was less realized.

0940

Next, regarding privatization: We have to look at the Clean Water Act in context with other legislation and developments to understand what our problem is here.

We do not want an exception for the private sector regarding diversions and uses such as is allowed in the Ontario permit to take water. It's not a desirable partnership to make water a public trust if profit is involved. We insist on public employees conducting the research and support. We find that when the private sector does that, their data is confidential and not always available. We also don't feel that these particular representatives are necessary on the study groups doing the research, the technical help—only on one condition: if they're working solely for the committee and not for their corporation.

What's happening is that municipalities are financially overburdened because of these onerous obligations and increased costs. That would be the only reason why they would even consider the privatization of their water systems.

Next, we have to look at the overall government plans. I know that we as a council were really unhappy with the blatant broken promise of privatized hospitals three years ago. There's a context to look at here—a lot of water legislation and a lot of municipal dollars responsible.

The first one is the Sustainable Water and Sewage Systems Act, and this is where a report has to be prepared regarding water and wastewater services. A municipal reserve account has to be kept for cost recovery to pay the full cost, infrastructure and so on. To my knowledge, the regulations still haven't been published. They are to come.

The second one is the Nutrient Management Act, which has legal requirements for the handling and storage of nutrients, and a municipal plan to be approved. It's a municipal responsibility for farms and property under 300 nuclear units.

There are a couple of other things that are not law. You have a water strategy expert panel. First of all, earlier this year we had this report called Watertight: The Case for Change in Ontario's Water and Wastewater Sector, a very private sector-oriented presentation. Their recommendations were the following: Municipalities are to prepare business plans on how they would amalgamate the water systems; an Ontario water board would be created to have the authority to approve plans or demand changes; they favour corporatization, whether it's for-profit or not-for-profit—we recall the electricity deal; and the water board was recommended to take over the inspection function of the Ministry of the Environment. This report is very threatening to local communities.

Less threatening, but also apparently from the same body, is the Swain report. That was done a year before that. Water infrastructure replacements were strongly recommended, but there was a particular note regarding water systems that are more expensive to operate, and those are the rural ones. The report was quite clear, and said "huge price shocks" for the population. They also recommended that there be no water utility with less than 10,000 customers.

In conclusion—and I have probably asked more questions than provided recommendations or directions—there are concerns that the implementation of this

bill after amendments could reduce water being a public trust and could do a lot of harm to communities. Thank you.

The Acting Chair: Thank you, Mr. Brady. We'll begin our questions with Mr. Wilkinson.

Mr. Wilkinson: Great. Thanks, Roy. Thanks for coming in.

I was asked a similar question yesterday about the privatization of water. I can assure you that we are opposed to the privatization or commodification of water.

It was a good suggestion about the medical officer of health. There was some concern about whether they should have a seat at the table on source water protection or whether they should be ex officio. In my riding in Perth-Middlesex I've got five watersheds and I only have two medical officers of health, so they've got to be ex officio and be in that process to protect public health.

You're right about the \$67.5 million. Actually, the total commitment is \$120 million. This will not work unless it's based on science. All of that money right now is being done to make sure we have the science right so we can get agreement as to which people are sharing the same source of water, because they have a common interest to protect the sources of their drinking water.

You asked a very good question: Does it apply to past activities? The answer is yes. The bill is very specific: past, present and future. You don't get an exemption on this because it already happened. If there's something out there that is a significant threat to the drinking water, it has to be addressed and it has to be removed.

The other thing is corporations. The act applies to individuals and corporations. There's no exemption for corporations.

One of the comments, quickly: We're looking at changing the permit official regime, which they call the building inspector model, to one of risk managers so that if there's a problem, the first thing you have to do is to see if you can negotiate a way of making things better, not this kind of stick approach, but you come up with the carrot first. Would you agree that in rural Ontario that would be by far the better way of dealing with this?

Mr. Brady: Likely. I would like to react to a couple of things you said. I am first of all very happy that you're opposed to the privatization of water. In reference to the \$120 million, it's money that's not being spent this minute, but has been spent?

Mr. Wilkinson: Over five years. We're in about year two of a five-year program to get the science done.

Mr. Brady: And it's sort of prior to the Clean Water Act being implemented?

Mr. Wilkinson: Yes; you can't do it until we agree where the science is underneath.

Mr. Brady: Our argument, of course, is that we'll need more money down the road, beyond what has been expended.

You mentioned corporations. My question referred to whether every time they mention an individual or a property owner or a person, a corporation is also included. Is that the case?

Mr. Wilkinson: Yes.

The Acting Chair: We're going to turn now to Mr. O'Toole.

Mr. Brady: It's not like I'm part of the committee, is it?

Mr. John O'Toole (Durham): Thank you very much, Mr. Brady. You've brought a lot of informed opinions on this bill and it's clear that you have some strong views.

On substance, you have examined the role of the conservation authorities. The conservation authorities' primary responsibility out of the act was probably flood control. In Peterborough, there's quite a history with that. I'm wondering, would you account as to how well they were actually doing their job? Not to be smart, but if someone is getting funded to provide flood control and that was their primary responsibility, in Peterborough there was a serious flood. You just wonder, are we going to be reassured here that there is the right authority looking after this? It's quite serious.

Mr. Brady: I certainly hope so. You introduced the Peterborough context from two years ago. Looking at it from an outsider's view, but watching a lot of people work, there was tremendous work done and there are tremendous plans being made to—

Interjection.

The Acting Chair: Mr. Leal, sorry. Mr. O'Toole has the floor.

Mr. Brady: I guess this is a combined Peterborough answer here.

Mr. O'Toole: The point I was making was, is that the right authority that exists today under their mandate to look after the security of safe, clean drinking water?

Mr. Brady: Well, it's the authority that exists right now. The fact that it will actually form the committee made up of a lot of stakeholders whose input is absolutely necessary I think is a good way to start.

Mr. O'Toole: I guess that's what my point is, that—

Mr. Brady: One more point. One of the problems with the conservation authorities is actually the funding of them. They're going to have to be better funded to do the job you would like them to do.

Mr. O'Toole: Agreed, and there's nobody on this committee at all on either side who would be opposed to safe, clean drinking water. I want to make that very clear. What we're looking for is a balanced bill. The money issue has been brought up by all levels of government. You've brought it up here today. I sat on a committee of cabinet post-Walkerton, and in that committee it was in the billions of dollars—not the millions; billions—for source protection.

The Acting Chair: Thank you, Mr. O'Toole. Mr. Tabuns.

Mr. Tabuns: Mr. Brady, just one second. Mr. Chair, with all respect to my colleagues, we have five minutes for questions. I know some of us are more talkative than others, but we've got people standing at the back of the room. People want to speak on time. If you would tighten it up a bit, it would be appreciated. I know it's a tough thing to do.

The Acting Chair: Mr. Tabuns, what we've done to this point is, we have had one or two of our deputants who have taken about eight and a half minutes. What I've done is allowed up to about two minutes if the time allowed. We had a full five. If the first question-and-answer took 30 seconds, I've had some flexibility with the balance of the questioners. We're trying to stay within a relatively tight time frame. Actually, we're catching up to our schedule.

Mr. Tabuns: Okay. Thank you, Mr. Arthurs.

Mr. Brady, thank you for your presentation. I agree that we need funding to make this act actually function. Would the Council of Canadians support water-taking fees for major water-takers because they will benefit greatly from protection of source water?

Mr. Brady: That's something I think we have to think a lot about, because one of the problems with water-taking fees is that some of the larger property owners and the corporations can easily pay fees, whereas some of the smaller people using water would have a lot of difficulty. If it takes some load off the municipalities, yes, but I think that's something we've got to think through much more.

Mr. Tabuns: Okay. Thank you.

The Acting Chair: Sir, thank you very much for your deputation this morning.

0950

ONTARIO FARM ENVIRONMENTAL COALITION

The Acting Chair: Our next deputant this morning is the Ontario Farm Environmental Coalition. Once again, just before you start, for the benefit of those who may be coming in or out, our procedure this morning is up to 10 minutes for your presentation and five minutes for questions, divided among the three parties on a rotational basis as we move around.

If there are folks standing and you find after a while it gets a little tiresome standing, I think we're working on getting some chairs in an alternate room, and some coffee. So you can sit for a bit and come back in, if anyone feels so inclined, at any point during the course of the procedure.

Good morning and welcome. If you'd identify yourself for the purpose of Hansard, and make your presentation.

Dr. John FitzGibbon: My name is John FitzGibbon. I'm the chair of the Ontario Farm Environmental Coalition. I'm accompanied by David Armitage, who provides our secretariat.

In looking at this act, we note that it covers the issue of source water protection. It's part of a suite of legislation that has been enacted since the Walkerton issue and that deals with a whole wide range of issues in providing clean water to the public. The issue we have is that the multi-barrier approach, which deals with redundancies and uncertainties, is not referred to, and an integration of this legislation has not been provided for

expressly. Therefore, at the front of this legislation it would be important to see that this is done so that Walkerton does not occur, not simply because of source protection but because the multi-barrier approach is effective in dealing with uncertainty and risk.

We note that the powers of making regulations are within the act, which is routine. We also know that our experience with other acts is that this is where real impacts are generated. The act itself is empowering. We encourage the government to embed within the act the process of broad consultation and involvement in this regulatory process, rather than finding them either appearing on the registry or having been passed by order in council without much involvement. Why? Because this is a revolution. We have, over the years, been planning land use. That is a designation; it sets out what type of use. But now we're moving into the management of land, and management of land is what we do day to day in living on it; it is behavioural. And if we intend to change behaviours, then we have to be involved in that process; otherwise, we take no ownership and we are unlikely to respond. So in putting together the regulations, involvement is there, and a set of tests is needed for the regulatory process: first of all, that they are needed; second of all, they are practical; third, affordable; and finally, effective. Because legislation that does not have the tools to effect change isn't necessary and simply clogs up the courts and the management process.

The process of implementing plans is a significant part of this act. We've been planning for a long time. We've got 40 years of experience in land use planning, and it's still the biggest issue that falls onto council plates, other than finance. So if this is to be successful in putting a new layer on top of land use planning, we need to have a process that clearly involves the public. The committees that have been put forward should be clearly in charge of this process since they represent the community.

Second of all, there is a necessity for working groups to provide for broader participation. We see at the local level our democracy evolve from representative to participatory, and so this process should reflect that evolution. The working groups need to be supported, because unless there is the capacity for people to be involved—and this will take a significant effort from concerned and involved citizens. Without their support, we'll lose them very quickly and there will not be ownership of this process.

The focus on land use change and management is one that really requires a different set of tools. The stick approach has been tried. It's been used in the EU and in the US. What we have seen is that they have changed. They have changed significantly to one which constitutes a process of negotiated solutions, contractual obligations on the part of land users for specific measures, which brings the funding and the activities together at the site where things are going to happen.

Another big change is the focus of regulatory agencies on education and awareness. To change behaviours has to be done because this is the right thing to do, not because

the government says so. If it is the right thing to do and everyone recognizes it, then it will be done, and regulation is simply for those who choose to be socially deviant. Therefore, we encourage a section of the act to deal with a required education and awareness program that makes everyone responsible and involved in this process. OFEC itself has been involved with risk management now for 15 years. It's a difficult business because it is itself uncertain. Rarely do we specify acceptable risk because it's difficult to say how many people you are going to allow to get sick. As a result, we tend to deal with risk by dealing with many different vehicles for implementation. We have 27,000 environmental farm plans in place in Ontario. We have been acting for 10 years. We have been improving our performance, yet we see that continuous improvement is the basis of moving forward. This is not a one-time process; this is a change in the way in which we deal with our land, and it represents a major movement of stewardship on behalf of society.

Hopefully, these suggestions along with the others in our brief that has been submitted will be considered as you move forward to amending the act. Thank you.

The Acting Chair: Thank you, sir. Our first question will come from Ms. Scott.

Ms. Scott: Thank you very much for your presentation. OFEC has been very prominent all week in getting the message across. There's certainly the heavy-handed, draconian approach that's in the legislation—where's the cost, who's going put the money and where's the money going to go? I guess my question to you is, do municipalities and landowners have the ability to take on Bill 43 as it exists right now?

Dr. FitzGibbon: I think it's going to be very difficult, particularly for the smaller rural municipalities. Landholders, depending on their means, will be pressed in some cases. We feel that a progressive approach—this is a major change. It's going to take us 20 years to make these changes. I note that in the city that I come from, Guelph, when it was presented to the public the public turned around and said, "Well, let's not protect the current source of supply. Let's build a pipeline." That's unfortunate. It may some day be necessary, but we can't rely just on the Great Lakes, so we need to move forward. This is everyone's responsibility. They all have to be involved.

Ms. Scott: Thank you very much.

The Acting Chair: Mr. Tabuns?

Mr. Tabuns: Thanks very much for coming and making the presentation today. If funding were provided by the provincial government to help implement this act, do you think that would engender a fair amount of support in rural Ontario for the measures that are being put forward?

Dr. FitzGibbon: I think that particularly in the areas where we lack the means—we don't have the tax base—that's going to be very important. I think where individuals are involved in protection—I would look at the example of Denmark—there is a contractual relationship

between the supplier of water, the municipality, and the landholders in the source-of-supply protection area that specifies what they will do in terms of protecting water and what the municipality will do in terms of providing funding.

Mr. Tabuns: Fair enough. Thank you.

The Acting Chair: Mr. Wilkinson?

Mr. Wilkinson: Thanks, Mr. Arthurs. John and Dave, thanks so much for coming and, of course, John, thank you so much for serving on the technical committee. We appreciate that. OFEC has been very helpful to all of us, all three parties, as we work our way through this. Some of the amendments already suggested by the minister that we're looking at really come from the good work of OFEC on this.

Dr. FitzGibbon: There's a partnership with government.

Mr. Wilkinson: That's right, about the whole idea of risk management, get rid of the building inspector model. Those things have been great feedback for us and I think it's helped all three parties.

We've said that we know later on there can be a question of hardship that we haven't been able to define, but we're going to be there. We're hearing consistently that it's not so much—the hardship has to be there, but it's that need to have that stewardship so that people buy in and there has to be that type of a program in there to fit that middle gap. If there's a really significant threat, the municipality could always just purchase the land. If the community really felt that that was a problem—

Dr. FitzGibbon: Which we support, because that's the greatest level of precaution.

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Mr. Wilkinson: Yes, because then you're going to get a willing buyer and a willing seller, and that makes sense. But it's all of that stuff in the middle that we have to worry about. Bills always have to look at both extremes.

What's our best way of making sure that that care is there first? You've helped us make sure the stick goes to the back of the tool box; what do we do on the care? If you could help us with that.

Dr. FitzGibbon: I believe that, because much of this is site-specific and the government has moved forward to the risk management approach, doing that analysis at a site level and then negotiating those things that need to be done and defining what is due diligence on the part of the landholder, because holding land is a right; it is also a responsibility. So you take care of your responsibilities and then, those things beyond due diligence, you negotiate a basis of funding. The greater the risk, the greater the measures that will need to be taken—that's the principle of proportionality—and the greater the measures in terms of costs beyond due diligence, the greater the support for that person to move forward, because in some cases they won't have the capacity, and if they don't have the capacity, do we put them out of business or help them move forward?

The Acting Chair: Thank you. The time for questions has elapsed. Thank you both, gentlemen, for your presentation this morning.

CITY OF KAWARTHA LAKES

The Acting Chair: Our next deputants this morning: the city of Kawartha Lakes.

Good morning and welcome.

Mr. Richard Danziger: Thank you. My name is Richard Danziger. I'm the director of development services for the city of Kawartha Lakes. With me is Kelly Maloney, our agricultural development officer.

Firstly, thank you to the committee for the opportunity to make a presentation on this particular issue.

For those who aren't perhaps as familiar with the city of Kawartha Lakes as we are, it's an amalgamated municipality consisting of the former county of Victoria and 16 municipalities. I think what makes us a bit unique is the fact that at amalgamation we had 30 municipal water systems, and we're down to 21 municipal water systems within our municipality. So this bill is of great importance to the municipality, both financially and administratively.

In February of this year, our council passed a resolution, which was forwarded to the minister, dealing with Bill 43. In it, the council indicated that it wanted to see an appeal mechanism be established for the ministry on decisions on source water protection plans; that identified costs, in their entirety, to implement and enforce source water protection plans be provided to municipalities by the province; that the act provide immunity to municipalities for any financial losses to landowners caused by the enforcement of source protection plans; and that the province compensate landowners for any financial losses caused by the enforcement of source protection plans.

I've provided a detailed submission, and I'd like to just summarize our position in relation to the act. I'd also like to indicate that we do strongly support the AMO submission on Bill 43 which was made to this committee, I believe, on August 22.

The financial issues are very relevant to the municipality. We're pleased that the province has gone ahead to make funding available for the technical studies. However, the act contemplates the creation of source water protection committees which will need long-term financial support, and there isn't any indication where that financial support may come from, whether it is a municipal responsibility or, ultimately, a provincial one.

It has been our experience that when it comes to provincially mandated actions in terms of water supply, the cost to the municipal sector ends up being fairly large. To cite an example, in the city we have the small hamlet of Valentia, and we had to upgrade the water system. This system supplied 55 households. The cost of upgrading the system was \$467,000, which is \$85,000 a household. Fortunately, the city has taken the position that it uses one uniform water rate across the city, so the people in Valentia weren't faced with astronomical costs. Even at that, water costs in urban areas of \$1,000 a year or more are not uncommon, and we would expect those to escalate over time.

We find, in our experience, that the province tends to pass legislation and, with respect, perhaps not consider

the municipal expenditures as much as it possibly should. For that reason, we suggest, as an example, the Oak Ridges moraine, where the city ended up expending a great deal of money implementing essentially a provincial piece of legislation.

In terms of our own municipality, not only do we have 21 water systems; we also have four conservation authorities covering our area, plus an area that's not covered by any conservation authority and is in fact covered by the province itself through the Ministry of the Environment or the Ministry of Natural Resources.

We are concerned that the formation of the source water protection committees will not be accountable to local government in the way that other committees that we have are. We are also concerned that the source water protection plan will take precedence over all local planning decisions. In the case of a conflict between a local zoning bylaw and the source water protection plan, the city will have to bring its plans into conformity, and it may be that the municipality does not agree with the conclusions of that particular plan. So, in essence, there may be a conflict between municipalities and source water protection authorities.

We are concerned about the lack of an appeal mechanism in terms of decisions related to source water protection issues and the fact that the Minister of the Environment now has an enormous amount of power—more so than the Minister of Municipal Affairs—in terms of planning decisions on land use matters as they relate to water situations.

The impact on rural municipalities is of concern to our municipality because in fact we are largely a rural community. We think the impact of the act will be unevenly spread across the municipality with a greater impact on our rural area than the urban areas. We feel that the act can have some very serious implications for our farm industry and it could be very detrimental to that particular sector of our economy.

We feel that owners of affected properties need to be assured that any cessation in legal land use be compensated, as the alterations are done in the interests of the public good. We feel that some of the provisions of the act could have the potential of eroding the competitiveness of our farm community within a global economy. The last thing that community needs at this time is anything that creates higher costs for their operations.

The pointy end of the stick in terms of landowner issues is the enforcement of the act, and that will fall, according to the act, to the municipalities. The powers that are under the act are really quite unprecedented compared to the normal bylaw enforcement powers that we have; as an example, the power to enter into a property without normal due process.

There is also the possibility that the municipality would have to order a business shut or a rapid change in some form of an operation that might cause severe financial difficulties. There is no provision for any compensation for that, nor, importantly to the municipality, is there provision in the act to compensate a municipality or

protect a municipality in terms of civil suits related to this particular act.

In terms of further impacts on municipalities, we feel that the act will impose substantial costs on assessment-poor rural municipalities. Although we aren't necessarily as assessment-poor as many rural municipalities are, we do have serious issues in terms of our ability to pay for implementing largely provincial measures. We'll have expenses related to amending our official plan and zoning bylaws. At the very least, we would ask the committee to consider provisions in the act that relieve the municipality from defending any changes related to the implementation of this act before the Ontario Municipal Board. Those can be substantial costs.

The act has the potential of placing ourselves in conflict with our own citizens. We will have to retain highly qualified permit officials to carry out the municipal responsibility. These are expenses and training costs that need to be considered by the province.

Finally, given the number of acts and things that we have to implement from the provincial level, we would ask that serious consideration be given to a transition period in order to allow us to handle whatever the end result of Bill 43 is, as opposed to getting it imposed all at once, because it is a difficult situation.

In summary, we feel that greater attention has to be paid to the implementation aspects of Bill 43. We don't doubt for a moment that the protection of source water is critical, but there has to be greater consideration for the financial impact on municipalities.

Thank you very much for your consideration.

The Acting Chair: Thank you very much. Mr. Tabuns will begin our questioning.

Mr. Tabuns: Thank you for coming in and making this presentation. If the province does not provide funding, will you actually as a municipality be able to implement the new duties that you will be required to carry out?

Mr. Danziger: I think we will have a great deal of difficulty doing it. When you have those kinds of difficulties, you become less than enthusiastic about implementing all aspects of any legislation. I think it will be extremely difficult because a lot of the costs will be borne by the water users and our rates are already very, very high. If we have to, we have to, but it will be slow and painful for us.

The Acting Chair: Mr. Wilkinson.

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Mr. Wilkinson: Can you just explain to me how a community like yours plans into the future about where you're going to get the sources of water in the future? Do you have a mandate that you have to look ahead 20 or 25 years?

Mr. Danziger: Yes, we do, and that relates more to our planning process. We look at the growth rates for a given municipality, such as Bobcaygeon, for instance, and look to the anticipated growth and to the water supply and attempt to ensure that we can provide adequate water supply for the municipality into the future.

Mr. Wilkinson: So you kind of identify those sources of water, and then this would fit in to make sure that, as you're looking at that, you're also getting assurance that there are not significant threats to those sources of water that you feel you're going to need to grow into one day.

Mr. Danziger: That's correct. The essence of the legislation, we feel, is positive in the sense that we need to protect our water sources, and certainly as part of a planning exercise we would want to have some powers in order to regulate land use in those areas. However, the difficulty becomes dealing with private property rights and the impacts it has on people.

The Acting Chair: Another minute.

Mr. Wilkinson: Just a quick question. The act allows a municipality to deal with having a risk management official, but also to delegate that authority, much in the sense that conservation authorities represent everybody in the watershed. In your experience, would municipalities commonly delegate that authority so you would have some consistency and you'd have people who were full-time about how to deal with the concerns that are raised by landowners, or do you see that there would be a whole bunch of different officials all over the place, depending on what side of a municipal boundary you're on?

Mr. Danziger: Based on our experience here, I think we have a tendency to delegate to an authority such the medical officer of health or things of that nature. It would be better to have some sort of commonality of enforcement so that you get consistency of action throughout an area.

Mr. Wilkinson: Yes. We're giving the municipality the choice, but your experience would be that, most likely, people would go to the delegation. That would be my guess.

Mr. Danziger: Yes.

The Acting Chair: Ms. Scott?

Ms. Scott: Thank you very much, Richard. The city of Kawartha Lakes represents, I think, the largest geographical part of my riding, and I can certainly appreciate the difficulty and the big task they had in taking over all the water systems, and the money that was put forward. At that point you did have a bit of cost-sharing: a third, a third, a third, if I remember.

You've brought a lot of good points and you've made it clear that it's going to be a financial hardship on the municipality if this bill goes through the way it is. You've also brought in the point of the confrontation that's going to exist, and municipalities are going to be put in the middle between the landowners. How do you see the bill? Do you think there's any possibility that we could make some changes to the bill so that it's going to be workable with the municipalities, or do we need to put in this legislation what the funding formula is going to be so these confrontations and financial hardships don't exist?

Mr. Danziger: I think municipalities, generally speaking, have been pushing provinces for sustainable, long-term financing, and I think clearly that has to be the case,

that we can count on the level of support for implementing this, and it has to be over the long haul. It can't just be, "Here's the money to start it, and then you're on your own." So I think the financial issues have to be somehow either woven into the bill or by regulation, and certainly I think that also relates to the conflict that I know we will have with landowners over implementation of this act if it stays the way it is.

Ms. Scott: Do I get another question?

The Acting Chair: Yes.

Ms. Scott: Great. There is a part in the bill, and we've had a lot of discussion over it through the week, that there's not appropriate—or not necessarily expropriation without compensation; we're going to get that clarified by research. But subsection 88(6)—I know you've read it in depth, and really it's up to the municipality to either buy the land, lease the land, or do some type of deal with the landowners. It doesn't necessarily say there's going to be financial compensation. That puts you in an awkward spot, too, because it's really the municipality that has to buy that out. I know the riding quite well.

Can you expand a bit on that? Would you like to see 88(6) removed or some amendments made? So there is again the confrontation there in expropriation without compensation.

Mr. Danziger: I think any time you're dealing with taking private land rights or the property itself, you have to have a very fair mechanism to the individuals involved in terms of compensating them. Whatever is required in the amendment to the act, that should be there.

Ms. Scott: Should the province be paying for that expropriation? Because I don't think municipalities can.

Mr. Danziger: Certainly, as a municipal employee, yes, the province definitely should be. But it's one of those indications that if you have to—especially when you look at us with 21 systems. You can expand and say that's going to be an incredible potential, and we really couldn't afford to do those sorts of things. So definitely we will be looking for some assistance through the province.

Ms. Scott: Thank you.

The Acting Chair: Thank you very much, Mr. Danziger, for your presentation and for your response to the questions from committee.

COUNTY OF PETERBOROUGH

The Acting Chair: Our next deputant this morning is the county of Peterborough. Just as the county gets ready to make its presentation, for the benefit of those who may be coming in or out, we have up to 10 minutes for your presentation and then a period of five minutes for questions through each of the three parties on a rotational basis.

Good morning. Welcome. If you could identify yourself for the purpose of Hansard, that would be helpful as well.

Mr. Bryan Weir: Thank you. Good morning. My name is Bryan Weir. I'm the director of planning for

Peterborough county. County council has authorized me to speak on their behalf this morning. I have distributed a three-page handout which I will be reading from.

By way of introduction, Peterborough county has a population of about 55,000 to 57,000 people, depending on if it's the weekend or not. We do have a large seasonal contingent, especially in the north part of the county. We have eight local municipalities, eight townships, and we have a total of four fully-serviced settlement areas, which is a lower-tier or a township responsibility. We do not have responsibility for water and sewer at the county level.

My comments will be coming from a county perspective. They'll be fairly general, and I have to admit that I do not profess to know the act in a lot of detail. With that, I will commence this part of the presentation.

Bill 43, the Clean Water Act, was derived, as you know, from the white paper on source water protection, which in turn originated using recommendations from the Walkerton inquiry. On December 5, 2005, the bill was introduced into the Legislature and subsequently received second reading on May 18. County council has been very interested in this issue since the inception of the Walkerton inquiry and the subsequent release of the white paper.

In April 2004, the county submitted comments on the white paper and raised the following concerns:

- the provision of significant provincial funding to deal with all aspects of source water protection;
- the need for further public and stakeholder consultation on any further steps on this issue;
- the seemingly cumbersome process organization;
- the financial, administrative and economic implications; and
- the implementation mechanism.

From a review of the literature in the current bill, it appears that the above items remain significant concerns, with the exception of further public/stakeholder consultation. The county thanks you for the opportunity to engage in further consultation. As mentioned, though, the county still has some ongoing concerns that relate back to our original expression of April 2004.

The first one deals with long-term implementation and funding sustainability. While the province has committed millions of dollars for staff and resources over five years to undertake the necessary technical studies required to assist in the implementation of the Clean Water Act, there is still concern over the long-term implementation and ongoing sustainability of the program in general. The legislation is meant to be perpetual and does not have only a five-year time horizon, as has been mentioned with the funding. To this end, it would appear that source water protection and the implementation of the Clean Water Act is another downloading exercise. Council strongly believes that source water protection should not be a local responsibility. The whole issue became a provincial initiative stemming from a provincially led inquiry. In this regard, it is strongly held that Premier McGuinty should consider source water protection as

part of his recently announced review of provincial and municipal service responsibilities.

The carrot-versus-the-stick approach: Notwithstanding the notion of responsibility, it may be far better to undertake the implementation of the goals and objectives of the Clean Water Act by using incentives rather than a highly regulatory, punitive and reactionary approach. The healthy futures program that was offered a couple of years ago was highly successful and it rewarded land-owners for taking action as it pertained to keeping rural water plentiful and clean. A slightly different approach using the same philosophy, coupled with Planning Act measures, may be all that is required to achieve CWA goals. At this point in time, the regulations associated with the Clean Water Act have not been released. Uncertainty as to what regulations will be associated with the Clean Water Act which have yet to be unveiled and, consequently, the full impact of the legislation on municipalities, whether it's the carrot or the stick, is still indeterminable.

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Organizational overload: There remains a concern over the cumbersome organization and process where municipalities have the ability under the Planning Act to address source water protection through official plans, land use designations, zoning, and site plan control without the need for another layer of planning approval by an external body. Source water protection plans should be prepared but then incorporated through the traditional land use planning documents. Conceptually, source water protection plans are being perceived as being unwieldy, costly and time-consuming, considering the number of times a document will be produced by a source protection committee, reviewed by a source protection authority and approved by the director or the minister, depending on the type of document. The initial submission of a document and the subsequent resubmission at the discretion of the minister seems unnecessary when the minister holds ultimate approval authority. The approval process for each step needs to be streamlined, especially if the intention is to get source protection planning in place in a timely fashion.

Currently, the township, health unit, Ministry of the Environment, conservation authority, public utilities commissions, the Trent-Severn waterway, the Department of Fisheries and Oceans and the county all have an interest in water and related matters. The question has arisen as to the benefit an extra body will have when dealing with the aspect of water issues.

Representation equality: Source water protection plans are to be developed, as you know, on a watershed basis. Watersheds can be limited or extremely large, depending on the area in question and the scope of the exercise. For the purposes of establishing source protection plans, Peterborough county falls within the area that is being headed by the Trent Conservation Coalition and includes an area that extends from the shores of Lake Ontario up to Haliburton county. This is an enormous area, both geographically and politically. The composition of the

source water protection committee will be 16 members, as proposed in the legislation, and only five members can be municipal representatives. The degree of representation by municipalities is sorely inadequate, since the legislation relates to municipal water systems, municipal land use planning and municipal enforcement. It is strongly held that municipalities should have the majority vote on such committees. A meagre five municipal reps is not sufficient.

In summary, the Clean Water Act as it is now does not appear to have transformed dramatically from the direction where source water protection was headed as part of the white paper. Concerns still remain over issues such as funding, duplication of effort, process, downloading and municipal representation. The county will continue to monitor the Clean Water Act on an ongoing basis.

Members of the standing committee, on behalf of the corporation of Peterborough county, I would like to thank you for this opportunity to present our concerns. We appreciate your efforts in securing the opinions and comments of interested parties regarding this very important subject. Thank you.

The Acting Chair: Thank you, Mr. Weir. I'm sure during the questions the members will acknowledge the lack of direct expertise on some elements of the bill.

Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in, Bryan. We appreciate it.

Just a couple of things. I see your point about the need to make sure that this is part of the new review partnership between the province and the municipalities about responsibilities and who's doing what and the costing, and that's a good idea. I think you'll find that the amendments that have been mentioned, signalled by the minister on the first day of testimony, about listening to a lot of groups about making sure that the carrot is at the front of the bill is important. I think you'll be happy with that.

You've got the issue about jurisdiction. A lot of the things that municipalities can do—land use planning, official bylaw changes and all of that; I think of your zoning and site plan control, official plans, land use designations—you say, "Well, why do something else when we can use these tools?" But are those tools as transparent as having everybody in the watershed working together as a committee, where, by law, these things have to be transparent? That's my first concern. Isn't it important that this whole process be transparent?

Mr. Weir: Of course it's important that it's transparent, and also consistent. You want to have basically the same conditions here as you do in the city of Kawartha Lakes, as you would out in Renfrew county or wherever. In that regard, I think a common document might work better than legislation that's directive and leaves it a little bit open-ended and perhaps an opportunity for some inconsistencies.

I draw your attention to an example that the province is using now with the greater Golden Horseshoe where they have a plan. A plan is there. The goals, objectives,

policies are consistent throughout the whole area of its application. What follows from that is, the local authorities, whether it's the region, the townships or the counties, have to implement that through their official plans and that has to be consistent.

The Acting Chair: Ms. Scott.

Ms. Scott: Thank you very much for your presentation today, Bryan. You've done a good job of interpreting how big the area is and the challenges that we're going to face, and you've brought a lot about the costing. I didn't know if you, as the county, have done any costing to say, as the bill stands now, how much you're going to have to put forward. Is it going to cause the municipality financial hardship? I know earlier this week a Ministry of the Environment spokesman, Ian Smith, said that they would likely have to change the legislation to say who pays for what. If you could just elaborate on that a bit. I'd like to say that Peterborough county is part of my riding of Haliburton–Victoria–Brock, and I share some of Peterborough with Jeff, too.

Mr. Weir: Unfortunately, I cannot provide you with an answer on that. As I mentioned, the provision of municipal services is a lower-tier responsibility and the county does not have responsibility for water or sewer. We have just heard from our constituent members, our reeves and deputy reeves at county council, that they're concerned about the cost and asked me to just relay that general concern to you.

Ms. Scott: And you think that there should be funding? Do I have any more time?

The Acting Chair: Yes, there's another minute.

Mr. Weir: Yes, I think there probably should be some—

Ms. Scott: Would you like to see the funding in legislation, as opposed to waiting for regulations and whether we have public hearings or we don't have public hearings on the regulations?

Mr. Weir: I think certainly that would add a level of comfort to our county politicians, knowing what kind of funding mechanisms are up front.

Ms. Scott: Do I still have more time?

The Acting Chair: Half a minute.

Ms. Scott: Excellent. You've talked a lot about the carrot versus the stick. We've heard a lot about this this week. You mentioned programs like the healthy futures program. We've heard from the agricultural community about the nutrient management plans. They are good stewards of the land. They come up to the table every time when initiatives need to be made, but it was done in a co-operative method. Would like to see that continue? It sounds like you would, but just to expand a little bit on what type of measures you'd like to see so we can take this draconian approach out of Bill 43.

Mr. Weir: I believe that the healthy futures program rewarded landowners for being good stewards, and I think it's that philosophy that we're looking at more so than the process. When you're dealing with something of this nature, the process is going to be different and, quite frankly, I haven't given a lot of thought to that very

complicated issue on how that might be carried out. But I think the healthy futures program was based on a philosophy that there was some cost-sharing. In this case, whether it would be with the municipality and landowners or the province and landowner or maybe some kind of tri-party arrangement, but based on that philosophy where you're rewarding or providing an incentive for doing something good.

Ms. Scott: A much better approach. Thank you very much.

The Acting Chair: Mr. Tabuns?

Mr. Tabuns: Thank you very much for coming in and making this presentation. I was talking with the folks from Tay Valley township when I ducked out there for a minute. One of the concerns they voiced to me was that on occasion there have been these cost-shared or incentive programs to deal with water quality, but their one-time grants or funding comes in and then it dries up. I assume that for your purposes you need a commitment to funding that's ongoing, stable and predictable; is that correct?

Mr. Weir: That's correct. Of course, we don't know what direction the act is going to take, whether it's going to obtain some provincial funding for a window of opportunity or it will be sustained, but I think if we go that route, such as the healthy futures—yes, it has to be ongoing because you're not going to capture everybody in the first five years. If you're looking at landowners to step up to the plate and take some responsibility, you're not going to capture everybody in five years. In that regard it has to be ongoing, and then every 15 or 20 years there has to be some kind of renewal or inspection or an upgrade done as well.

So to answer your question, in the short term, yes, there needs to be simple, ongoing, sustainable funding.

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Mr. Tabuns: Thank you for that. I appreciate it.

The Acting Chair: Thank you, Mr. Weir, for your presentation and response to the committee's questions.

Mr. Weir: Thank you very much for the opportunity. I appreciate it.

LINDA CARDER

The Acting Chair: Our next deputant this morning: Linda Carder.

Ms. Linda Carder: Good morning. As you've noticed, I am not representing anyone except, as I call them, the no persons, the people who have great voices, they talk, they speculate and that's where it ends. They don't join a group to have their voices heard.

So I'll start off by saying good morning, and it's nice to see all of you this morning. I appreciate the opportunity, as a single individual representing no one but myself and other people like myself, to give my thoughts on Bill 43.

Firstly, I support the thrust of the bill, just like I support the Safe Drinking Water Act and the Nutrient Management Act. We citizens of the world require

reliable drinking water, quantity of water to drive farming industry, commerce and personal lives.

My concerns are threefold: Dividing the responsibility—this is the biggest one, and I've heard it expressed today in several different ways—for administration of the act between municipalities, conservation groups or any combination of responsibility will, I believe, create confusion of who does what; what falls into my camp, not yours; a lot of squabbling over territory and money. This wastes time and money to set up some kind of infrastructure that will work co-operatively between two bodies or more. With this act added to the mix, I believe the province should set up a ministry of water quality that regulates all facets of water management. That would include your nutrients, your safe drinking water, and I've heard of this other one that I wasn't aware of, this one that was mentioned by Peterborough. Sorry, I digress. I believe this province should set up this ministry that regulates all facets. This way, I, as a private citizen, could go to a water ministry and get information about the city of Kawartha Lakes, which is where I live, or Sudbury, or any other region with regard to water quality and quantity, where to locate to have a reliable source of potable water, water for my farm, water for my business, or just for my personal use. If this gets left to each community, there will be no central source.

I also wonder where all these water experts are going to appear from to service all these municipalities in Ontario. We have Ministry of Health units in place. Why not use that resource to place your ministry experts, not local experts, in each community? I perceive that this should be an Ontario responsibility, not a municipal responsibility. I believe that it is just too great. Prince Edward Island is experiencing, as you well know, a nitrates problem in all their drinking water, and it's because it was not centralized. It is now. They are now dealing with it, they've identified it and they can do something about it. I, as private citizen, believe that this responsibility for ensuring water safety and supply should not be left to the municipality or conservation area or any combination of the above. It should be a provincial responsibility.

Secondly, I find the section dealing with the entrance onto private property worrisome. We are told to have faith in the government, which would then be either conservation, municipality, a committee of 16 or whatever, not the Ontario government. We would not give policing this latitude to enter property without a warrant; why would we want water police to have carte blanche to enter private property? I believe we need this act to reflect community standards of access to private property; that is, first ask to inspect by registered mail and then if that request is denied, they would have to follow the same procedure as any other authority, and that is to get a warrant from a judge with sufficient proof that a warrant was needed.

We who have wells on our property feel we are already investing in the safe water aspect by keeping our wells healthy, as it is in our best interest to do so. What

we cannot protect is our source water. I believe this bill will do that, but there still has to be proper procedure. With the rumour running rampant that we're all going to have water meters on our wells, and nothing from the province saying it's not going to happen—which allows it to, of course, feed on itself. There is nothing in the bill that I've read, and I've read the bill—I can't find “water meter” mentioned once, and maybe I missed it. There are no regulations in this bill, and the devil's in the detail, as we all know.

I don't know how the idea got started, but I presume it was to get people's interest, and it surely has. I would really appreciate government clarification on this point, and I believe Peterborough addressed the point. When the regulations come out, are we going to have hearings all over again to deal with what's in the regulations?

Ms. Scott: I hope so.

Ms. Carder: Well, yes, but it just keeps—and I hope we'll have a bigger room next time.

My third point, which is my last point, as I said, is the biggie. Well, it's not the biggie, but it always is. It's, “Who pays?” If this is given to the community to set up and run again, here are all these experts going to come from? This is another direct cost to our tax base, and, depending on how our bill requirements are interpreted in each community, the requirements will be met in a variety of ways. Some communities will get basic service; some people, depending on their tax base, will get a very extensive, expensive plan.

This goes back to my very first point: Keep this bill at the provincial level. Do not give it to the communities. It is too important. Put all your water—source water, nutrient management, safe drinking water and that other one that Peterborough mentioned which I wasn't aware of—if it's this important, if we're spending this much money, this much time, get it right the first time. Without good drinking water, reliable drinking water and also source water for industry, farming and so on, we can't live. We will then be fighting over water.

I'm sure there are many other issues I could have covered. These are my three main concerns, and I'm not just saying, “Don't do it.” We need it. But do it at the provincial level, because I believe that's the only way that this bill can be properly implemented—not based on having seen the regulations; based on my feeling. This is too important to be left at the community level.

In the city of Kawartha Lakes we finally got a burn bylaw that took five years to put in place after amalgamation. I can see what would happen if we had to implement something—and this not a negative; it's just human nature. It is strictly human nature. “This belongs in my bailiwick.” “Oh, no, no.” “Then we'll both do it.”

Now when I go to find out where I can get clean drinking water or enough water for my business or farm, I may have to visit three different sources and they may conflict, or they may not be reliable. Why not do it at the provincial level through your health, which is water—because without water, we're not healthy in any aspect within the province.

I certainly support the concept and am waiting to see the regulations. I really believe it's a provincial matter and should stay at the provincial level. Thank you.

The Acting Chair: Thank you, Ms. Carder. We'll start our questions with Ms. Scott.

Ms. Scott: Thank you very much, Linda. Linda's a constituent of mine, and I appreciate the fact that you've taken the time as a private citizen. You've read the bill and you've done a great summary. I thank you for putting the time towards that. You are concerned with your community.

We've heard this story over the entire week: This should be a provincial responsibility. Bill 43 shouldn't be brought forward the way it is—it's going to pit the municipalities against the landowners. It is a provincial responsibility in the fact that they could already be moving forward in source water protection under the existing acts. There have been many that have been mentioned, and that's actually what Justice O'Connor had said: Don't set up another level of bureaucracy; use the tools that you have, change them a bit, enhance them.

We do feel that that this bill is being brought forward just to download onto municipalities and landowners.

What the bill does not say has been a big topic of discussion. Certainly the private well-metering—it isn't said in there, but there is no clarification. If the bill does pass—and we're going to do clause-by-clause, etc., and hopefully make some amendments to it, and it goes through the Legislature—but we are outnumbered—and the regulations are brought forward. When nutrient management came forward, and I know a lot in the room were involved in that, the public consultations—we had about 18 public consultations, so we had a good hearing. What would you like to see? Can you expand a little bit more on the public consultations—whether you don't think there were enough in this bill, or not enough people knew about them?

1040

Ms. Carder: It's not that I don't think people knew; it's the aspect of, "What effect would it have on me personally?" It's very difficult for people to see a bigger picture. We watch the little movies on television saying, "Drill a well in Africa." We say, "Well, what's the problem with the water?" We can turn on a tap pretty much anywhere in Ontario. I have friends who live in Kingsville who've been under a boil-water order forever because of problems down there. It goes on and off, but it has been there forever because of the number of greenhouses and the leachate that's going into the water source and so on and so forth. Prince Edward Island is a perfect example of nitrate contamination of the water. I'm not an expert. I watch television. That's where, unfortunately, I see these programs which are of interest to me to do with climate change, water and so on. It's just that when you put them all together, this, to me, is a provincial matter. It is like education. It is like health. Can you imagine if each little area set up their own little OHIP system? It wouldn't work.

Mr. Arthurs, please—I'm a former constituent of yours too. And of Mr. O'Toole's. I've moved around.

Mr. Tabuns: You should try my riding; it's not bad.

Anyway, thanks for the presentation. You put it together pretty coherently, pretty logically. Just to be clear, you believe that not just people in municipalities but people in rural areas all deserve the same quality of safe water. Is that correct?

Ms. Carder: Yes, exactly.

Mr. Tabuns: Those on private wells?

Ms. Carder: Yes. I believe our source needs to be protected, and I don't see that even this will protect it, because if a farmer a mile and a half up—I actually don't know where my source water is—decides to spread nutrient on his land over a period of 15 or 20 years, it can affect all the wells that are in that source water. It will eventually leach into—I'm not saying they're doing that, but I, as a single individual, can't prove that my water quality has gone down.

I lived in Claremont—if anybody knows about Claremont, Mr. Arthurs does—when 85% of the wells in Claremont were deemed contaminated and they had to make a huge decision because there was no safe water. My well was fine. I was okay because I had a drilled well, but most people didn't. That changed how Claremont formed after the airport thing went through or didn't go through; whatever. Anyway, I'm digressing. Mr. Arthurs certainly knows what I'm talking about regarding safe water in a small hamlet area and how you can resolve it in one of two ways. I have been there. I have seen the devastation that bad drinking water can create in a community: major health issues—not on the scale of Walkerton, but it certainly did affect the health of the community.

It's an interesting process, but I truly believe it needs to be at the provincial level, not left to municipalities. Can you imagine if you had to get your driver's licence in a municipality and you didn't have a standard act to cross? You drive into this municipality and, "Oh, you need this kind of licence to work on our roads." I just get this feeling that it has to be at the provincial level in order to be satisfactorily implemented.

The Acting Chair: We're going to move to Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in. I hear what you said about the fact that you get these kind of rumours floating around and you can't put them out because you can't disprove a negative. I think I'll have to post a sign in every Tim Hortons and every feed mill in Ontario that says, "There'll be no metering of private wells." The minister has said that over and over again.

Interjection.

The Acting Chair: I'm just going to remind the members that it's hard for the deputants to hear the questions if we're interjecting.

Interjection.

Mr. Wilkinson: Oh, I'm getting to the question.

I appreciate the fact that you've raised that on the record, because it is important: What do you do with rumours? Anyway, I hope I've clarified that for you.

What O'Connor told us to do was to get the people who are sharing the same source of water, whether it's from the Great Lakes or from a river or from the aquifer from the ground, together in the watershed, working together to plan it. The alternative is to have what I would always call the reg. 170 idea where you have the ministry trying to have one blanket rule across the whole province, and it's very, very difficult for that to make common sense.

In this process, the local community comes together, but all of those things have to go up to the ministry to be approved to make sure you've got the consistency because, for example, we heard in Ottawa, we have all these different sources all coming together. Wouldn't you see it overly bureaucratic if from one central location in Toronto we were trying to micromanage all of that? Isn't it better that local people have the input?

Ms. Carder: I agree with input, but I still think you need to have your experts. Where are you going to find all these experts to spread out all over Ontario? Are they graduating from school? Do they already exist? Do they have to take five years of training? There's nothing in there to say—

Mr. Wilkinson: You wouldn't believe how many experts there are around here.

Ms. Carder: The definition of an expert is somebody with a briefcase 20 miles from home, but that doesn't solve my problem.

Mr. Wilkinson: And there's a lot of them.

Ms. Carder: But I—

The Acting Chair: With that, we're going to have to call the end of our question period for this round. Linda, thank you very much. It's good seeing you. Take care.

TRENT CONSERVATION COALITION

The Acting Chair: Our next set of witnesses this morning is the Trent Conservation Coalition.

For fear of being repetitive—I know some people are coming in and going out—you have up to 10 minutes for your presentation and approximately five minutes for questions and responses. At your leisure, if you'd identify yourself for the purposes of Hansard, that would be helpful.

Mr. Jim Harrison: My name is Jim Harrison and I'm the chairman of the Lower Trent Region Conservation Authority. It's an illustrious position and I have to constantly beat up my cohorts to maintain my responsibility. On my right is Charley Wote, who is from Conservation Ontario, and Dick Hunter, manager of the Otonabee.

I'm also a city of Quinte West councillor. I've been a councillor since 1990. I've also been a farmer. I still am farming. My son farms. In amongst the years that have passed, I've also spent 35-plus years as a school teacher and 33 of those years as an elementary school principal. I allude to that because there is a distinction between myself and a lot of farmers: I do have a pension. I guess you'd say I have the pleasure of farming until either I'm broke or dead, whichever comes first.

I'm making this presentation on behalf of the Crowe Valley, Ganaraska, Kawartha, Lower Trent and Otonabee authorities, which are working in partnership to deliver source water protection under the banner of the Trent Conservation Coalition.

Here today also are the chairs and staff from the TCC conservation authorities. I won't introduce them. They're not all here, but some are here.

I'm also going to use Charley and Dick to assist with answering any questions.

I know that during the course of its hearings held across the province this week the committee has heard from a number of conservation authorities as well as Conservation Ontario. So once again in the interest of time, let me just say that the CA members of the Trent Conservation Coalition support both the Clean Water Act and the amendments recommended by Conservation Ontario. We agree that these amendments will help to strengthen the act and ensure its success. If you have questions for us on these amendments, and particularly on how they will affect the TCC, we'd be happy to take them.

I would like to use some of our allotted time to tell you about the TCC, the importance of the Clean Water Act and proposed amendments to the work we do and how it will help in the management of the watersheds we serve.

Our comments fall into the four category areas as outlined by Conservation Ontario:

- addressing non-municipal water supplies: This is particularly important for the TCC as more than half of the population in this source protection region are serviced by individual wells and surface water supplies;

- we stress an integrated approach to water management;

- the need for legislation that balances the regulatory approach with incentives and education; and

- the critical need for long-term, sustainable funding for municipalities and conservation authorities that includes the implementation. Without this, the program will fail.

Let me just take this further. The question is not, "How will this impact farmers?" as far as I'm concerned. The fact is that farmers are already severely impacted and facing many hardships.

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The TCC, at 14,500 square kilometres, is the largest of the proposed source protection regions in Ontario. While we have some larger urban centres in our region such as Cobourg, Lindsay, Peterborough, Port Hope and Trenton, we are largely a rural area. That brings me to our first point. We believe that the committee must consider non-municipal water supplies.

In the TCC, municipal water supplies include 40 well supplies and 19 surface water supplies. The Trent River is one of the largest surface water supplies in southern Ontario, excluding the Great Lakes. Approximately 53% of the population in the TCC relies on private drinking water supplies from surface and groundwater. The

groundwater system that supplies these private wells is physically complex and beyond the confines of individual properties. Fractured bedrock over large sections of the region provides abundant pathways for contaminants to reach private wells. Some local residents draw drinking water directly from the area lakes. Currently, the Clean Water Act does not adequately address these drinking water sources. This is a serious defect, particularly for the TCC. We cannot ignore over half the population in our watershed areas.

Education and incentives for individual landowners within the framework of watershed-based source protection plans is the best way to protect these drinking water sources—again, education and incentive. Helping landowners to recognize the effect of their actions on their neighbours' water supply is critical. Rural wells that are properly constructed and maintained are a key way of ensuring that regional aquifers are protected. Locating and decommissioning abandoned and unused wells is another important component. With respect to drinking water, the health of rural residents who depend on private supplies cannot and must not be placed at a lower priority than those on municipal systems.

Secondly, an integrated approach to water management must be taken. Source water protection cannot be considered as a stand-alone program. Drinking water is only one piece of water management, which must address all of the ecological, economic and social needs for adequate water quality and quantity.

To achieve drinking water source protection, a collaborative planning process must be used. Likewise, implementation must entail a co-operative approach, employing the tools and resources of a number of agencies, municipalities and organizations. Planning and implementation of source water protection plans must be carried out in concert with all of the other water quality and quantity considerations. This is the perfect opportunity to connect the dots into an integrated water management program for Ontario.

The conservation authorities of the TCC currently work with municipalities and property owners through land use planning, capital works projects and stewardship initiatives. These efforts help protect downstream water quality and quantity. The TCC conservation authorities also have active public awareness and education programs that help create an understanding of the benefits of comprehensive water management.

Thirdly, incentives and education are key to successful implementation. The Clean Water Act will bring together a wide range of stakeholders and interest groups to create a plan that will represent a consensus on how best to protect sources of drinking water. To be implemented successfully, those responsible for implementing the plan will require a wide range of tools.

The Trent Conservation Coalition conservation authorities share our colleagues' concern that the current Clean Water Act relies too heavily on a prescriptive regulatory approach to implementation. The TCC conservation authorities are successfully managing flood plains

using a comprehensive approach, employing the tools of planning policy, capital works, education and awareness, as well as regulations.

Using regulations as the sole method to achieve compliance is not the way to protect drinking water sources. Neither the province nor any of its partners in this endeavour can ever afford to hire enough enforcement and prosecution staff to force every landowner to meet the requirements of this proposed legislation. Investing in incentive and educational programs in the long run will be the cheaper and more effective way to achieve significant change.

Last but not least, I want to talk about funding. Clean, plentiful sources of water provide a wide array of benefits to all of us. Our health and economic and social well-being depend on it, as does the ecological health of the places where we live. Therefore no one group, sector or set of municipal property taxpayers should bear all of the implementation costs. While the province has committed to fully fund the planning phase of drinking water source protection, it must also commit to be a significant and sustained funding partnership for the implementation.

Most of the municipalities that are members of the TCC conservation authorities do not have the financial resources or the tax base to raise the funding that may be required for effective implementation. All residents in the province will benefit, and all residents must contribute in a fair and equitable manner to the costs of source water protection. The conservation authorities of the TCC believe that they are well positioned from a technical and watershed-knowledge standpoint to take on the duties of monitoring and reporting progress as outlined in the proposed Clean Water Act. Sustained funding and support from the province is, however, critical to our ability to successfully take on these new tasks.

Again, non-regulatory tools such as education, stewardship incentives and strategic land acquisition have been very effective in watershed management programs. These incentive programs and land acquisitions were successful due to the collaboration and efforts by a wide range of government/non-government partnerships as well as the voluntary involvement of landowners.

In summary, the conservation authorities of the Trent Conservation Coalition support the Clean Water Act as a tool to ensure clean, plentiful sources of water. However, changes are required to make this proposed legislation more effective. The province must commit to a long-term partnership with conservation authorities and municipalities to provide policy direction, technical standards and sustainable funding for both planning and the implementation of source water protection. We believe that the changes outlined in the Conservation Ontario submission will help to implement the recommendations of Justice Dennis O'Connor.

Conservation authorities of the Trent coalition wish to thank the standing committee on social development for the opportunity to provide input on the Clean Water Act. I leave you with one quote that I recently obtained from

Gord Miller: "The ultimate test of a moral society is the kind of world it leaves for its children." Thank you.

The Acting Chair: Thank you, Mr. Harrison. The questions will begin with Mr. Tabuns.

Mr. Tabuns: Mr. Harrison, thanks. That was quite good, quite solid. You folks are obviously committed to clean water. You think the legislation makes sense. If it was implemented without funding made available, do you think you would actually be able to carry through your responsibilities as outlined in this act?

Mr. Harrison: No, no, no.

Mr. Tabuns: You know, I'm getting the drift and I appreciate it. Thank you.

The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: As a boy who was raised in Trenton, who has cottaged for the last 28 years on Crowe Lake, I'm always happy to be here. My wife actually was born in Peterborough.

Mr. Harrison: You must know Charlie Crowe.

Mr. Wilkinson: That's right.

Mr. Harrison: You know Charlie Crow; good for you.

Mr. Wilkinson: I've got a question for you. With your experience, what do you think the source protection implementation will cost? We've had various estimates from the region of Waterloo and the county of Oxford. What do you think?

Mr. Harrison: I'm going to pass that over to Charley. Charley has put a lot of thought into that.

Mr. Charley Worte: Yes. It's the \$7-billion question, I think. Obviously, it's a serious question. The reality is, though, that until the planning work is done and we get some idea of what we're dealing with, you're not going to get a good answer to it. I think the numbers you've heard from Waterloo and Oxford—they're the municipalities with the most experience in this. They're probably the ones best positioned to provide an estimate, and they've provided that to you. They're probably in the right order of magnitude, and those are probably the best numbers you're going to get for the time being.

It's important to put that into context, though. There's a lot of discussion about what it will cost, but you need to compare it to other things. Put into context, the Waterloo-Oxford numbers represent less than 5% of what's currently spent on municipal water supplies. It's not an insurmountable number.

The other to remember is that it's not all-new funding either. Municipalities are already doing a certain amount of work toward protecting their sources of drinking water. Conservation authorities are already doing a lot of watershed stewardship work. I think we spent \$20 million in watershed stewardship projects in 2003 or 2004, whenever that statistic was from; I can't recall. You heard this morning about the environmental farm plan; you've been hearing about it all week. The agriculture sector already does a lot of good work to protect drinking water, so there's a lot of work being done. This is not like we're starting from zero.

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The Acting Chair: I'm going to move to Mr. O'Toole, and, depending on the nature of his question, you may have a chance to finish your answer.

Mr. O'Toole: Thank you very much for your presentation—very informed. As well, your experience that you bring to the table is extremely important.

I just want to pick up on the last point that you made, which has been brought forward by almost all the presenters, the whole idea of the funding. In your report you said, "Last but not least." But when I look at the profile for the Trent Conservation Coalition—which does affect part of my riding as well as where my cottage is—it's a huge area, some 333,000 people. When I look at the money you've received, it looks to me so far like you've got about \$1.6 million to do the work for such a large geographic area. I don't want to be redundant here in repeating it, but is this enough to do the sort of ground-water assessments for your large geographical area and the number of communities that you serve, as well as the coordination of conservation authorities, the logistics of just the responsibility of all those different authorities, from the Ganaraska right through to the Crowe area?

The Acting Chair: One minute for your response, Mr. Harrison.

Mr. Harrison: In simple terms, and maybe Charley can add to this, if you compare salaries with conservation authorities in municipalities, you know very well that the conservation authorities are doing a lot for less.

Mr. Worte: I'm not really in a position to talk about Trent specifically, but generally across the province we're only in the preliminary stages, and so far, yes, we have adequate funding to do the work. But until we see the legislation, the detail and the regulations, again, we can't say for sure.

Mr. O'Toole: Well, one thing that troubles people—

The Acting Chair: Thank you. That completes our time for questions in this round. Thank you, gentlemen. We very much appreciate your presentation this morning.

FEDERATION OF ONTARIO COTTAGERS' ASSOCIATIONS

The Acting Chair: Our next deputants this morning: the Federation of Ontario Cottagers' Associations Inc.

Welcome. If you would undertake to identify yourself for the purpose of Hansard as you begin your presentation. You'll have up to 10 minutes for your presentation, followed by questions by members of the committee.

Mr. Terry Rees: Good morning. My name is Terry Rees. I'm the executive director of the Federation of Ontario Cottagers' Associations. I'm a constituent in Jeff Leal's riding, for what it's worth, and I'm upstream of Mr. Wilkinson, so maybe he wants to pay attention a little bit, and Mr. O'Toole, I think. I'd like to thank you for the opportunity this morning to speak to the proposed Bill 43, the Clean Water Act. I've circulated my speaking

notes from this morning and I'll be using those as a summary of my comments today.

By way of introduction, the Federation of Ontario Cottagers' Associations, or FOCA, is a province-wide association of about 600 community associations in virtually every riding in the province. That's a collective membership of over 50,000 private property owners, most of whom live adjacent to or directly right on surface waters.

We've been around since 1963. We've got a long-term legacy of protecting Ontario's freshwater legacy. We have a long-standing position of relying on education and support programs for landowners, and clean water has been a cornerstone in our regular and active participation in contributing to sound public policy for over 40 years. I'll mention some of our key initiatives related to this through my discussion this morning.

We've been pleased to be involved in the Clean Water Act as it has evolved over the last couple of years, with our association, with a broad coalition of environmental and other groups, speaking to some of the specifics and some of the key elements of what we think a robust legislative approach to this important issue consists of. I've got about six points which I'd like to go through which relate specifically to what we think ought to be in the Clean Water Act.

The first is the precautionary principle. The extensive efforts over the past few years to apply our best science—and I applaud the work of Conservation Ontario and others—to gain a more wholesome understanding of our surface water resources and groundwater resources represents a great step forward. This applies in only some parts of Ontario, by the way, and I'll speak to the equity and the geographic scope in a moment. The science that is evolving will be critical in developing plans that more effectively protect water at its source. The practitioners working in this field are the first to admit, though, that it's an impractical task. As previous presenters from the Trent coalition have said, it's a pretty daunting task to understand where every molecule of water in this province is going and how it's impacting water quality.

We strongly recommend, as FOCA, that the act explicitly incorporate the precautionary principle. What I mean is that where there are threats of serious or irreversible damage to an existing or future source of drinking water, a lack of full scientific certainty shouldn't be used as a reason for postponing measures to prevent the threat. That approach is consistent with the science-based approach the ministry has been taking to the Clean Water Act. It fills in the gaps where science can't provide absolute certainty. It's also in keeping with Justice O'Connor's recommendations in volume 2 of the report of the Walkerton inquiry.

I was going to mention the \$67-million figure which was cited earlier. If you look at who's getting this money, and since most of our constituents are outside of CA lands and are not specifically considered in some of the more protective measures considered within the act, it's been meted out in \$10,000 and \$20,000 chunks in a lot of

rural Ontario, which is not going to deliver sound and comprehensive science. We need to have the ability to work on the precautionary principle.

I thought OFEC's comments about the risk assessment approach were interesting. We have some concerns about the use of risk management agreements due to the slippery slope of potential abuse. We, like OFEC, think there ought to be a contractual arrangement, legally binding and subject to periodic review.

In terms of the geographic scope of source protection, we know that about 1.8 million Ontarians live in drainage basins where at least one quarter of the population is rural. That's according to StatsCan's Rural and Small Town Canada Analysis Bulletin this year.

As was stated in the statement of expectations that our coalition of groups put together over a year ago, we believe the government should require that a source protection planning framework is used in all watersheds in Ontario, and that any new legislation must protect all potential sources of drinking water, not just those feeding existing municipal systems. We recommend that there be mandatory development of source protection plans outside the existing and proposed source protection areas, which are primarily the existing conservation authority boundaries. The spirit and intent of Justice O'Connor's recommendations around protecting water at its source are not served by concentrating only on sources directly adjacent to municipal water supplies and, by exclusion, leaving other sources of water unprotected.

Our inland waters in Ontario either serve as or feed the drinking supplies for much of rural Ontario; we've heard about that. Many also serve as the headwaters for southern Ontario's urban centres. As such, central and northern Ontario's inland lakes and rivers shouldn't be excluded from too narrowly defined "surface water intake protection zones." The safety and health of rural families are every bit as important as those of urban southern Ontario and people on municipal systems. The degradation of water should not be allowable. In the near-north areas not too far from here, which would be outside of an area, that fractured limestone situation is a cause of considerable concern for people on surface water and on private wells.

From a public participation perspective, if the public is going to develop a sense of ownership over source protection plans and a corresponding interest and active role in the implementation, it's encouraging that the act includes mandatory public consultations at every stage, from the proposed terms of reference to assessment reports and source protection plans, prior to their approval. There will be many parties that want to participate in the committees, and it is essential that the process be open to the public and vested in local stakeholders. Adequate funding must be provided so that those who are interested but without financial resources may take part in the planning and implementation of plans for the protection of water at source.

I'm going to mention funding, because I haven't heard it. It's a gaping hole in the existing legislation, and it's of

concern to every single person, whatever their position might be on the bill. I think everyone's in favour of clean water, and who's going to pay for it is, of course, of great interest to everybody.

We, like others, recommend that there be sustainable and reliable funding for the implementation of source protection plans. This should be via dedicated funds that aren't subject to annual budget-setting—or budget-cutting, as the case may be—exercises and political whim. Additionally, funding should take advantage of mechanisms, many of which I think have been identified by the implementation committee, which include water-taking charges, water rates, pollution charges, and especially incentive programs for private landowners.

The province must establish secure and sustainable long-term funding to adequately support capital and operating expenditures related to ongoing source protection plan implementation, monitoring, education and enforcement.

The protection of source water yields broad and important public benefits, and as such it should be funded through a combination of broad—that's provincial—public funding, through private landowner conservation incentives and through water-taking charges, but not through property taxes. Municipal capabilities vary greatly, both in terms of their technical capacity and their ability to fund social programming. As we heard today, there's a fair amount of operational burnout with the burden of services that have to be delivered at the local level.

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We've got an ongoing participation with the Minister of Finance about what exactly lives on the property tax bill, and we're anxious to see that reform. We're hoping this recently announced review will be hastened and that municipalities will be able to fund only those things related to funding for services.

I should point out that rural municipalities—that's where many of our members are—have a financial disincentive, which is a very important one, to stringently enforce setbacks. It's just a financial situation that's there, and that's why you're getting a lot of backlash from the municipal sector, especially in rural Ontario, because this is yet another program that they don't know how they're going to deliver and how they're going to pay to deliver it.

In terms of public outreach and stewardship, we're encouraged by the inclusion in the act of potential threats, groups of non-point threats and provisions to protect future sources of water. The ability, for instance, to conduct and charge for septic inspections as a non-point source which impacts rural Ontario is important. The lands in south-central Ontario are predominantly privately owned, and the engagement of private landowners is a key to success. The buy-in of people who live on the land is just going to be key to making this thing work.

Source protection committees should be mandated to provide landowners with information and technical sup-

port and financial support to assist them in identifying and preventing drinking water threats. The province should allocate funding specifically for this outreach and education, again through funding mechanisms other than property taxes. As stewardship and education are most effectively delivered through known and trusted sources that are local, including non-profit organizations, where applicable, source protection plans should identify and utilize these local resources. That's community groups and others.

In terms of the protection of clean water versus other public goods and the primacy of the act, we believe that the protection of water will only be as good if it isn't overridden by other acts and legislation. We are concerned about the exemptions in the provincial policy statement review, where certain undertakings were basically given higher preference to other social benefits. I think it's important that primacy is there.

We've been a member of the minister's advisory council on mining reform, by the way, and we're still awaiting some feedback on that to speak to some of the earlier concerns we heard about in terms of private property rights and the protection of water.

Our water is a priceless asset, and careful stewardship of our water resources within a solid and adequately resourced framework is the only way we're going to preserve this resource for generations to come. Thank you.

The Acting Chair: Thank you, Mr. Rees.

Questions, beginning with Mr. Wilkinson.

Mr. Wilkinson: Thank you, Terry, for coming in. In addition to the current approach, I just want to get your comment about whether we're on the right path here. The ministry is considering an amendment as a means of improving the level of protection for non-municipal systems that would provide the minister with the authority, under section 10, to amend the terms of reference or the source protection plan to include certain non-municipal drinking water systems or clusters on a well on a case-by-case basis, in the sense that right now it's up to the people doing the committee work. But we've heard a lot of testimony. If you've got a nursing home or a school or a whole bunch of people clustered on a well, right now it says the municipality may decide to extend this protection to them. We're getting a lot of testimony that the minister should also have the ability to amend that. So would you agree that that's important?

Mr. Rees: I think the permissive language that's in the legislation, which is a lot of "mays" and "coulds" and "mights," could be problematic, and that might be, again, not a matter of anyone's lack of commitment to clean water but just a lack of resources and ability to deliver. So it might be a foregone conclusion that some municipalities just aren't going to be able to hold the very highest standard, just by way of their funding and the way they're organized and the scope of their geography. So we think it's important that there is a fail-safe that says that some rural communities will not be afforded the same level of protection.

The Acting Chair: We need to move to Mr. Yakabuski.

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke): Thank you very much, Terry, for joining us this morning. Clearly, one of your concerns, and obviously of your members, shared by many of the submitters over the past several days, is the cost of implementing this bill, subject to regulations, and who's going to pay for it. You did talk about the government coming down at AMO with a plan to rethink the funding formula with regard to municipalities. It's kind of convenient, I think, that maybe it's going to go beyond the next democratic opportunity for people in this province, being the election of October. It's not surprising that it's something that's been talked about for all of this term so far. Our leader actually recommended that at last year's AMO conference.

Why do you think they would be going ahead with this bill, which potentially is one of the largest downloads in the history of the province for municipalities, and therefore the taxpayers of those municipalities? Let's not kid ourselves about who's going to pay the bills. It's going to be the people who own property and rent homes and operate businesses etc. in those municipalities; they're the ones who are going to be paying. Why do you think this government is proceeding at this point? Why is it not part of this 18-month so-called plan? This should be delayed so that—

The Acting Chair: You may want to leave time, Mr. Yakabuski, for a response.

Mr. Yakabuski: Okay. Could I get your response on that, sir? This clock goes faster when I'm up, it seems.

Mr. Rees: Firstly, I don't purport to understand why the Clean Water Act isn't already in place, given that Walkerton was as long ago as it was. To speak to your specific question, I don't know why the uploading hasn't happened. By the way, FOCA has spoken about the uploading of those services from municipalities for at least 30 years. We haven't given up yet, so I guess we can wait 18 months. We're hoping that as a broad social benefit, it'll get funded through a broad social fund, and our progressive income tax system is where those broad social services ought to be funded. That's consistent with what other provinces do.

Mr. Yakabuski: So it should come from the province.

Mr. Rees: It should come from the province.

The Acting Chair: Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation. What brought you to the position that the precautionary principle had to be incorporated into this act?

Mr. Rees: As I say, it's a big province, and there's not anyone who will recommend with scientific certainty how water flows, who's going to be impacted and how long that's going to take. The people that know the most about this are the ones who say, "Boy, we really don't know enough about this." If you ask the hydrogeologists, the ones that have looked at it the most, they're the ones who say that there's a lot more to this than meets the eye. So by using the precautionary principle, whether it's reasonable evidence that there will be a risk to water, that's good enough reason to protect it, because there's

no justification for impacting the long-term health of water.

The Acting Chair: Thank you, Mr. Rees, for your presentation and your response to the committee's questions. I appreciate it.

RENFREW COUNTY PRIVATE LANDOWNERS ASSOCIATION

The Acting Chair: Our next deputation this morning is the Renfrew County Private Landowners Association.

Good morning, gentlemen. As a quick reminder, if you would identify yourselves when you begin your presentation so that it's recorded in Hansard. You have up to 10 minutes for your presentation and then a period of approximately five minutes for questions amongst all three parties. At your leisure.

Mr. Jack Kelly: Thank you very much, Mr. Chair. Good morning, ladies and gentlemen. Thank you for letting us make a presentation here this morning. My name is Jack Kelly, and I'm the vice-president of the Renfrew County Private Landowners Association. To my right is John Jeffrey, a member of the board of directors. We're here today representing the Renfrew County Private Landowners Association, a group comprising private landowners, loggers, private citizens, farmers and small business owners.

We believe the following: All citizens should have the right to own property and should have the right to use their private property for enjoyment and to earn a living from their land. We agree with the goal of protecting sources of drinking water and ensuring there is an adequate and healthy supply for future generations. However, we believe that private citizens, landowners and small businesses, not government-appointed committees, are the best custodians of our natural resources.

It is our belief that this bill is one more in an ongoing series of attacks on the rural economy and lifestyle, in an attempt by the province to take over management of private land. This belief is not a conspiracy theory, but is based on several recent examples of governments' attempts to co-opt private land and interests:

- use of the environmental act to close rural sawmills;
- theft of private property through the use of the species at risk act;
- unfair property tax assessments by the Municipal Property Assessment Corp. and the attempted reclassification of woodlots and maple syrup producers;
- elimination of the family farm through the Nutrient Management Act;
- use of the Meat Inspection Act to force small businesses to stop meat cutting and wrapping; and now
- erosion of our rights through the safe water act.

This sweeping act, if passed, will govern all land in Ontario where water enters or exits from the ground, including rivers, lakes, springs and wetlands. It also includes wells, septic systems and even ditches. Virtually all plots of land in Ontario's rural areas, regardless of size, include one of these items, so the measures of Bill 43 could have devastating results on private landowners.

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Our association views this latest attempt to “protect our water supply” with much apprehension. This apprehension stems from four main concerns:

- the vagueness of the bill, with the real consequences to be determined on a piecemeal basis by local committees, who will have practically unlimited broad powers and authorities without any real accountability to the taxpayer;

- the lack of a cohesive vision which would ensure consistency of approach and ensure all areas of the province are treated equitably;

- the language of compliance and punishment in the bill, which contrasts with vague reassurances of so-called help for small businesses and landowners who would be oppressively affected by the findings of the committees; and

- the unlimited powers given to various individuals and officials to encroach on private land in order to conduct research and investigations to assess alleged threats.

The members of source protection committees, who will wield a great deal of authority and influence, will be appointed by local municipalities and, we believe, could be subject to manipulation by various special interest groups. The ministry documentation makes frequent use of soothing language, such as “communities would work together,” “property owners could be involved in finding solutions,” and, “There will be strong municipal representation ... which will also include a range of other stakeholders.” However, we were unable to find any reference to a mandatory requirement enshrined in and protected by the law to include representatives from landowners and businesses.

In Renfrew county we already have an example of how these ad hoc committees can create havoc with private landowners. Private landowners were invited to participate in the Renfrew County Stewardship Council. I use the word “invited” loosely here, as their input was, by and large, totally ignored. The council was led and funded by the Ministry of Natural Resources, and the culmination of their efforts was the Renfrew County Private Land Stewardship Forestry Discussion Paper, dated January 2006. This paper now misrepresents our association as having endorsed their discussion paper. This we were and still are unable to do, as the paper is rife with misrepresentations, vague language, distortions, errors and omissions. We asked the ministry in February 2006 for their assistance in having our name removed from this discussion paper, but have yet to hear back from the minister.

This, then, is an example of how the encouragement of the province to participate in these committees can backfire on honest citizens acting in good faith. Small wonder we are reluctant to trust their newest creation, the source protection committees.

The responsibility for the creation of source protection plans will rest with these committees. In this way, there is great likelihood that all communities throughout Ontario will not be treated equally. One of the stated goals

of the Clean Water Act is to govern the improper disposal of hazardous wastes and the improper disposal of chemicals. Under these separate and autonomous committees, how can this possibly be approached consistently in the greater Toronto area and the Golden Horseshoe, balancing the interests of a high concentration of population and industry? How can that compare to Renfrew county, a rural farming community? Does anyone believe that the so-called rules for disposal of wastes and chemicals into the Great Lakes are on par with some of the oppressive measures being enforced in the rural areas through the Nutrient Management Act?

The bill contains no commitment to compensation for landowners for any measures that may be taken. The ministry states that there may be cases where the costs of taking action will be a hardship for businesses and property owners, and the province is developing a comprehensive approach for helping owners. We are hesitant to place our trust in such vague promises. We are especially hesitant because even though the promises of help are quite vague and not enshrined in the bill, the ministry has, conversely, obviously given careful consideration to the orders to pay costs and to the enforcement of orders to pay, which include the ability to add costs to tax bills. These costs could include and even require landowners to bear the cost of risk management plans. In addition, the ministry has clearly given great thought to minimum fines for farms and businesses.

The language of the bill itself amply demonstrates, by the exclusion of clearly articulated provisions for assistance while carefully including punitive measures, that extreme caution must be exercised in trusting these latest Liberal government promises. It does not go unnoticed that the imposition of fines and requirements of various costs associated with the findings and investigations of the committees has been left out of the ministry’s communications with the general public through their fact sheets.

Unlimited powers of access to private land are granted through this bill to municipalities, members of the source protection committee, police and other government officials. Power is even granted to conduct a search without a warrant under certain circumstances. Further provisions of the bill allow various officials the authority to seize and confiscate private property without consent and without compensation.

This arbitrary removal of individuals’ rights and freedoms is very chilling. It is disquieting to note that the conciliatory language in the fact sheets prepared by the ministry also omits any reference to the removal of these rights. This raises the very real worry that there are other motives hidden in the bill, which are ours to be discovered.

Ontario’s private landowners are committed to the common good, which includes protecting existing and future water sources. They have proved their commitment through centuries of their and their ancestors’ efforts at working the land, paying taxes and building businesses while raising families and providing food, goods and services for their fellow Ontarians.

We are unable, however, to endorse this bill as written, due to:

- the creation of the source protection committees and their extensive powers and authorities and lack of accountability;

- the complete autonomy given to the committees, which could result in inconsistent and inequitable approaches across the province;

- the language of oppression and punishment contained in the bill, with no developed plans enshrined in the bill for assisting those most affected by the outcomes of the committees; and

- the encroachment on the rights of private citizens to own and protect their land by granting sweeping powers to search, in some cases without a warrant.

We ask for a complete review of the bill, with a more articulated and practical approach to protection of water sources which will also protect the right of the province's citizens to own and develop their land and businesses.

The Acting Chair: Thank you, sir. You're generous enough to leave us a little extra time, as well as the endorsements of your comments.

Mr. Tabuns had to step out for the presentation. We have approximately three minutes each. Mr. Yakubski, three minutes; questions and answers.

Mr. Yakubski: Thank you, Jack and John, for joining us this morning. I try to get my head around this sometimes. Do you believe that these kinds of pieces of legislation we're seeing from this government—and of course we haven't seen the regulations yet, and that's what could really be scary, I think—are a manifestation of what seems to be their attitude, that the rural communities, from a political point of view, are to them somewhat dispensable, or that their views are not important? They talk about the consultation process that went on prior to them bringing forth this bill. I'm wondering if any of your associations or groups that you represent were ever part of any preliminary discussions before this legislation was brought forward.

Also, I'd like your views on—because we live in the reality that the government holds a significant majority, and if they want, they're going to push this piece of legislation through, and there's little we can do to stop it, other than to raise our objections—what impact that is going to have on you and your association across the province of Ontario.

Mr. Kelly: In the first part of your question, John, no, we've never been informed or invited to any consultation that's ever taken place before today.

As far as rural Ontario, if you remember, there was a paper put out. It came out in the *Toronto Star*, back—I was trying to think when it was when you were speaking there. Its findings were to just let rural Ontario die. Well, we are rural Ontario, and we're not going to die; we're not going away.

As for the implications of this, it'll be real hard on our association and our communities, our county. I'm a member of the local council; I have been for 15 years. If this is brought through—I've seen many downloads brought to the council table—there's no way that a

council of a rural community can afford this. It will devastate us. There are no two ways about it. It will paralyze us. We'll be dead.

Mr. Yakubski: By way of amendment, what can be done to make this in any way acceptable? Because we recognize that, as I say, the government can push through whatever kind of legislation it wants. They have the majority. What can we do to improve it, and who has to pay the bill?

Mr. Kelly: I'd say the province has to pay the bill, but as I said before, being a member of the local council, you know as well as I do that this government of today can pass a bill and say that they will fund this for the end of their term. When the next term comes up and the next election is over and there are new people sitting around this table, that's not enshrined in stone; it never is. That could be changed. So people could accept it, by the government saying, "Yes, we'll fund it for ever and a day," but that day ends after the next election. The next one can change it; you know that.

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The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks, Jack, for coming in. Just following up on the question about the composition of the source protection committees, we've had testimony from farmers who've said—and I represent a rural riding—that farmers need to be on that committee. I know the ministry is looking at being more prescriptive, to make sure that the source planning committees have representatives who have to be there. But you're wearing two hats. We've got the municipalities who have come to us and said, "Well, you say that we may have a third, but we want to have more than half"; we've had the farmers say, "Well, we've got to have more than half"; and then you're saying, "You'd better make sure that the land-owners and the business owners are there too." So I was wondering if you could help us. If we're going to have a community of all the people who are sharing the same drinking water source come together, how do we balance those interests?

Mr. Kelly: It's got to be balanced in each community. Every community knows their community better than anybody else does; you know that as well as I do. In my particular community, we have a perfect split, as the fellow would say. We have a third farming, we have a third residential, and we have a third business, so our split is really nice. When we amalgamated, we became one of the more perfect splits, if you want to call it that. In our case, it makes it easy for us, because we can get the representation from the farming community and we can get the representation from the elected officials, because a lot of them are on farms and everything else.

Mr. Wilkinson: You've got two hats anyway.

Mr. Kelly: Yes. It's going to be a hard draw for a lot of municipalities. That's why I say that the government has to really keep control of this. They can't download it to municipalities.

Mr. Wilkinson: But we should make sure that it's local people who are driving this, though, as opposed to coming top-down, like regulation 170 or something.

Mr. Kelly: That's right. But it's going to be awfully hard to get local people to push this. As a municipal official, I would have a really hard time pushing this bill. I would almost have to say I'd refuse to push it, to be quite honest with you.

Mr. Wilkinson: The proposed bill shows 15 people and a chair. We were in Cornwall and we heard testimony about the fact—actually, if you're going to make sure you've got all your municipalities represented, because of the vast areas, even if you just used upper-tier, this person testified you'd really need 19. So should there be leeway so that we can make sure that each one of these is the most responsive structure, or should it be this kind of one-size-fits-all approach?

The Acting Chair: Thirty seconds.

Mr. Wilkinson: Is it better for us to err on the side of caution by having a bit more flexibility to make sure they're all represented?

Mr. Kelly: Yes, I would say you need the flexibility, for sure.

The Acting Chair: Thank you both for your presentation this morning. We appreciate it.

Mr. Yakabuski: Do I get a rebuttal?

The Acting Chair: No.

NATIONAL FARMERS UNION, RENFREW COUNTY LOCAL

The Acting Chair: Our next deputants this morning are from the Renfrew County National Farmers Union. I'd note that our deputants have been waiting patiently this morning for their opportunity.

Please identify yourself for the purpose of Hansard, and the committee will come to order accordingly.

Ms. Laretta Rice: My name is Laretta Rice. I am from the Renfrew County National Farmers Union. I've lived on the family farm all my life. I'm a retired school-teacher. After my husband passed away, I owned and operated the dairy farm. Now my son is a fifth-generation dairy farmer on the same farm. Therefore, my heart is very much in this.

First of all, I am a secretary of the organization. The president, Dave MacKay, has big construction at his farm today. He's got his contractors working. He couldn't leave. Vice-president Kevin Coughlin has 90 acres of grain to combine, so he couldn't leave. So here we are. On my left is one of our executive, Rob Anderman, and on my right is Christina Anderman.

I will do it in three parts. I'll do the introduction, she'll do the body, and Rob will do the conclusion. You'll hear a lot of the same as you've heard earlier, I'll warn you, but I think it's good for this group to hear the same thing over again.

The Acting Chair: Since you have three presenters, I'll give you notice when there's about one minute left in the 10-minute allocation.

Ms. Rice: Okay. We'll be short. We've cut a lot out. For you who are following, we've cut this down because I know lunchtime is coming and people are getting hungry.

The Renfrew County National Farmers Union welcomes this opportunity to present the views of its members on the issue of Bill 43, the Clean Water Act. The NFU is committed to maintaining the family farm as the primary food producing unit, strengthening rural communities and building environmentally sound, sustainable local economies.

As an organization of farmers, the NFU believes that responsible stewardship of the land, water and air is a fundamental requirement for a healthy food system and a healthy society.

Ms. Christina Anderman: While Bill 43 addresses a serious issue and indeed contains many measures which may increase the province's ability to protect drinking water quality, the legislation does not adequately address a number of legitimate concerns raised by rural residents, landowners and municipalities. On the positive side, the national farmers' union strongly endorses the principle adopted by the Ontario government of using watersheds as the geographic basis for managing and protecting the quality and quantity of surface and groundwater. We also support the concept of locally developed source water protection plans. However, the NFU does have serious reservations with respect to many of the provisions contained in Bill 43, the Clean Water Act, 2005. These concerns involve landowners' rights and responsibilities, the regulatory process itself and the costs involved in implementing the proposals.

In the last few years there has been a major farm income crisis across Canada, including Ontario. While farms continue to produce vast amounts of wealth, that wealth is siphoned off the farm and out of the rural community because the food chain is dominated by very large multinational agri-business corporations. The decline in rural communities is very much a reflection, therefore, of existing trade and agriculture policies. It is therefore vital that the Ontario government take this context into account in determining on whom the burden of maintaining high-quality water supplies should fall. It is also critical that the Ontario government keep in mind the fact that the entire provincial population benefits from a reliable supply of good-quality drinking water, and therefore the public should bear the bulk of that cost.

Rural communities have traditionally borne a major portion of the responsibility for the maintenance of water quality and quantity simply because that is where the vast majority of surface and groundwater supplies originate. Clearly urban municipalities, particularly in Ontario, are heavily dependent on a healthy environment in rural watersheds. Rural residents that utilize production methods that respect the environment should be recognized for their contribution toward protecting Ontario's natural wealth.

Normally accepted farm practices which pose little or no risk to municipal drinking water supplies, and which are widely used by family farms across Ontario, may be curtailed or severely restricted if this legislation is enacted. Measures which may be appropriate for limiting or eliminating pollution by large-scale industrial operations clearly are inappropriate when applied to smaller-

scale, well-managed family farms. In fact, family farms may be viewed as a key component in the larger solution to overcoming water quality problems in rural areas.

Obviously, the nature and scale of a farm operation, in conjunction with the characteristics of the soil, drainage patterns and geology of the land itself, will determine what constitutes appropriate land management practices. A family farm with a herd of beef or dairy cattle that may be dispersed over a significant area of pasture land and brought together periodically is significantly different from an intensive feedlot where animals are constantly confined to a relatively small area. The same difference holds true for hog production on family farms—where hog manure can be spread as a natural fertilizer over fields covering a large area—compared to intensive hog factories which generate massive amounts of sewage that must be stored and treated in lagoons before eventual disposal, sometimes at a great distance from the source.

It is vitally important to ensure that measures aimed at preventing contamination of municipal drinking water sources from industrial hog factories and other large-scale intensive livestock operations are implemented and enforced. But it is also vitally important to distinguish between these operations of an industrial nature and scale and family-farm-based livestock production.

The NFU believes that appropriate management of the land and its associated agricultural operations is the key to ensuring drinking water source quality is protected. It is therefore essential that agricultural interests—and by this we mean working family farmers—be guaranteed representation on the source protection committees.

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Protection and enhancement of water quality is something that benefits everyone across Ontario. But the bulk of the responsibility for this role falls on farmers and rural communities because they are the people who reside on and/or own land in the critical source watershed areas. Most farmers already take excellent care of their land and ensure that the water that originates on or passes through their land is not degraded, either intentionally or accidentally. A large number of farmers have also voluntarily implemented environmental farm management plans for their operations, at considerable individual expense. It is important to note that families who have farmed the same land for generations are undoubtedly the best source of information and knowledge concerning not only the soil and bedrock geology of the land but also water drainage patterns. They are often the first to notice when problems occur and are literally on the front lines in protecting that water source.

Perhaps the most worrisome aspect of the legislation is the lack of compensation for farmers and rural communities for restrictions imposed on normal farm practices. A suggestion put forward by OFEC would require municipalities to assume control of the wellhead protection areas and intake protection zones associated with their wells and surface water systems. This control would be accomplished through either direct purchase or a lease agreement, the cost of each to be determined

through negotiations between the municipality and the landowner, taking into account full opportunity costs to the farmer.

As was stated earlier today, municipalities themselves need to be compensated by the provincial government for complying with the obligations outlined in the legislation. Municipalities, either singly or in partnership with neighbouring jurisdictions, would need to employ a hydrologist, a hydrogeologist, a civil engineer, an agricultural engineer as well as the standard municipal planner in order to prepare proper risk assessment reports. Obviously, many municipalities would be unable to absorb these increased costs.

In addition, the art and science of predicting potential risks to water quality is opaque at best. Site-specific predictions are nearly impossible. It is not uncommon for analyses prepared by experts to be questioned based on other equally reasonable assumptions. Once these risk assessment reports are prepared, at considerable expense, the possibility exists that the study may be rejected and another one ordered.

Mr. Rob Anderman: The National Farmers Union congratulates the Ontario government on taking steps toward protecting our province's precious drinking water supplies. However, Bill 43 in its present form should be regarded as a work in progress that still requires additional input from the public and substantial improvements before it becomes law.

The NFU believes that clean water is a fundamental right for all Ontario citizens, and will work with other organizations and the Ontario government toward achieving that end. However, we believe that the following issues need to be addressed fully in any legislation that comes forward:

(1) Society as a whole benefits from protecting and enhancing municipal drinking water sources, so all of society should bear the cost. Farmers and rural communities should not be unfairly made to shoulder the financial burden, particularly at a time when family farmers are already reeling from an unprecedented income crisis.

(2) Any legislation must ensure that the regulatory framework and enforcement mechanisms will not disadvantage smaller family farms more than large corporate operations.

(3) Working family farmers must be guaranteed meaningful representation on the source protection committees.

(4) Risk management requirements must be appropriate for the farm operation they are targeting.

(5) Family farmers must be fairly compensated for any loss of agricultural land use.

As a final comment, the family farm is a big part of the solution to water quality issues, not the cause. Please record that the family farm has provided the service of clean, quality water for generations and, if not burdened further, will continue to do so.

The Acting Chair: Thank you. We'll move to Mr. Tabuns for the first of our five-minute allocations for questions.

Mr. Tabuns: Thank you very much for making this presentation. I've asked others, and I just want to ask you and have it on record: If this bill goes forward without a commitment in statute to funding, do you believe that there will be significant resistance on the part of rural communities to its implementation?

Ms. Rice: Yes, I certainly do. It can't go ahead unless those farmers who are now suffering—their income is lower than it was in the Great Depression, the majority of income. You have to have 100% funding. On top of that, I know a lot of people who work long hours, 14 hours a day. They don't have time for the paperwork, the extras that this involves. And most farmers, as mentioned in the presentation, are doing a good job right now. I know on our own farm that's been there for generations, we have decommissioned wells, we have filled wells properly and so on. Most farmers are doing their job as is, right now. So 100% funding and nothing less.

Mr. Tabuns: Okay. Thank you very much.

The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: Lauretta—I'm married to one, so I'm always partial to Laurettas—thanks for coming in. Thanks for being a great steward of the land. The vast majority of farmers—and I have a very rural riding myself—are wonderful stewards of the land.

My question would be, if we had the source water planning committee and if we had this risk management official—not the building inspector model, but a risk management official—come and say, "Listen, we've got some concerns. Can we work together to try to just make sure that if there are any potential risks, we're just mitigating them so they're not significant?"—do you feel that in that approach your members would say that person would be welcome on their farm?

Ms. Rice: Very much so. The environmental farm plan is a very good first step. We've had one, two, and now three is coming aboard, and quite often there are people who come to help that farmer, and he'll ask for that help: "I have manure storage that I'm a little worried about." They may ask the ag rep or somebody who very well understands the issues. He'll come and lay it out and offer suggestions on the most economical way that he can improve it. I know one farmer in our area is very close to a waterway. There's never any manure behind his dairy barn. It's transported to another area immediately once it drops to the ground, because he knows he's in a very sensitive area. My hat goes off to that farmer for doing it.

Mind you, there's a very small percentage of farmers who are guilty, and there is legislation right now that could look after them, but it's a very small percentage of farmers who do things that are not proper. It's very small, like we get everywhere, on the highways and everywhere.

Mr. Wilkinson: I agree: very small.

The Acting Chair: Thank you, Mr. Wilkinson, for your questions. Mr. Yakubski.

Mr. Yakubski: Thank you very much, Lauretta, Christina and Rob. We've talked about these and many issues many, many times, and I certainly recognize the challenges that your members face in Renfrew county

and across the province of Ontario. Funding is one of the big issues.

One of the other things you talked about was real, tangible representation on any source protection committee. I think that's something we have to be very, very watchful of, because beware the guy who comes around and says, "I'm from the government; I'm here to help." The fact is that we have to ensure that it's not token representation, because that is a very, very significant thing that goes on. We've seen it—I'm not even going to be partisan—on any government's part: They ensure that they've got members from certain groups to show they have implied support, such as they implied support of the Renfrew County Private Landowners with regard to the report by the Ministry of Natural Resources. So I think it's very important to have serious, real representation.

One thing I'd like to ask you, Lauretta, because you're the best one to answer this: When you talk about the funding—and you know the precarious situation of many of your members and how many of them are working long hours on the farm. It's very interesting and not surprising that the government would schedule these committee hearings in the summertime, of course, when your people are out working—

The Acting Chair: You may want to let Lauretta answer a question: 30 seconds.

Mr. Yakubski: Lauretta, how many of your members will probably be facing bankruptcy if this is not funded by the province?

Ms. Rice: We already have quite a few farmers who have quit, sold out, paid off as much of their debt as they could. As mentioned earlier by one of the other presenters, they had—was it 50 farmers in their area who gave up last year? We have dairy and we have mixed farming, and a lot of people working off the farm. It's the off-the-farm income that's carrying those farmers, not the income off the farm. That's the only thing that's allowing them to hang in there. These people are very close to the earth and that's their culture and their heritage, so they'd like to hang on to the family farm, or the farm that their father has farmed. They'd really like to hang on to it, because that's what they like to do. And we live in a very beautiful county, as you know. You go through some of the valleys there. It is a sight to see when the corn is ready to be harvested and so on. Thank you.

The Acting Chair: Lauretta, thank you very much for your presentation.

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LAND IMPROVEMENT
CONTRACTORS OF ONTARIO
DRAINAGE SUPERINTENDENTS
ASSOCIATION OF ONTARIO

The Acting Chair: Our final deputation for the morning session is the Land Improvement Contractors of Ontario. Again, for the benefit of our final deputation of

the morning as we move towards the lunch break, if you would identify yourself when you begin your presentation for the purposes of Hansard. You have up to 10 minutes for your presentation and then questions from committee.

Mr. John Johnston: Thank you, Mr. Chairman and members of the committee. My name is John Johnston. I'm the secretary-treasurer of the Land Improvement Contractors of Ontario. I'm here today speaking on behalf of the Land Improvement Contractors of Ontario and the Drainage Superintendents Association of Ontario. Our industry builds and maintains cropland drainage infrastructure. Our business is soil management to improve the quality and quantity of crops produced in Ontario. Our food supply comes from crops, and food is equally important to human health and survival as is water.

Clean drinking water is a commodity of utmost importance to all citizens. We all want and expect to have an adequate supply of safe drinking water; therefore, maintenance and protection of the resource is the responsibility of all citizens. No undue burden of protection should be placed on any one citizen or group of citizens.

Throughout the process leading up to these hearings, we've already raised many issues that we feel need to be considered. All of our issues are based in fact. As the process moves forward, the focus comes to one single issue, and that is money: What is the public willing to pay for? There are at least four costs that we have identified that need to be addressed.

One is breach of biosecurity. Costs incurred as a result of this must not be borne by the property owner if an unauthorized person enters a property and spreads disease—disease from crop to crop or livestock group to livestock group.

The cost of liability: If a person unauthorized by the owner enters a property and is injured, the property owner must not be held liable; for example, the inspector going on the property, getting run over unintentionally by machinery, being attacked by livestock or pets, or similar situations. If a person acting under the authority of the act causes damage to the property, then that person must be liable for the damages that have occurred.

The cost of lost or altered production: If production must be altered or reduced or is ordered to cease based on guidelines that are not consistent with the 2005 interpretation of the Ontario Nutrient Management Act, the Canada Pest Control Products Act, the Ontario Pesticides Act and the Ontario Drainage Act and current regulations, or any other act that exerts control over the rural landscape, then the landowner must be duly, fairly and promptly compensated. The provisions of the acts identified are based on sound evidence-based science and serve the public interest as related to both clean water and safe and adequate food production.

The fourth cost is the cost for the municipality to maintain and enforce the provisions of the act. The cost will be prohibitive if the provisions of the act are applied beyond municipal wellhead protection.

Rural Ontario can provide whatever resource protection the public is willing to pay for. It's not good enough to say that costs will be addressed by regulation, because regulations can be changed at the will of government without the opportunity for appeal, and cost is far too important to the implementation of the act to be left to an afterthought.

The Clean Water Act, 2005, as proposed, creates a rural/urban divide. It implies that municipal elected officials and landowners are incompetent to manage natural resources. Under the act, only the Minister of the Environment is qualified to perform that task. The act creates a huge conflict between rural municipalities, which have to pay the ongoing cost of the operation of the Clean Water Act, and the urban municipalities that can raid the water resources of their rural neighbours with impunity and none of the resource management cost.

By centralizing all the authority for resource management in the Minister of the Environment, the bill creates a one-window focus for control of all land use, planning, development and zoning, which renders several ministries redundant. By statute barring all causes of action that may result from implementation of the act, the bill abdicates all the responsibility for resource management decisions taken by the Minister of the Environment. This is unacceptable.

In the final analysis, we all want and should expect clean drinking water. However, fairly distributed cost must determine how far we extend the provisions of the Clean Water Act, 2005. We petition the committee to consider these points in their deliberations on the bill and to propose appropriate amendments to address these concerns before recommending the bill to the Legislature. Thank you.

The Acting Chair: Thank you very much for the presentation. We'll begin the questions with Mr. Wilkinson.

Mr. Wilkinson: Great. Thank you, Mr. Arthurs. We appreciate the fact that you're able to come in and join us today.

You've raised the interesting issue of biosecurity. I know that the minister addressed that on Monday in her opening remarks, the fact that we will require that any person entering onto land on a farm is completely trained on biosecurity. What the act actually says right now, which we thought was reasonable, of course, is that if you come onto land and you cause damage—and, obviously, those of us from rural ridings know what happens if you were to bring a virus into a barn—there is liability there. I think that's why the government is kind of on the hook and is on the same side with you about the need to make sure that there is that mandatory training, so there's an awareness of that. We're working on amending the bill to make sure that that doesn't happen. I know your own membership are very aware of that, and we just need to make sure that that's transferred to others.

The question that I had, though, has to do with, we've got all of these other acts that you've mentioned where

there is land use restriction and there isn't compensation. I think about the Ontario Nutrient Management Act. So your testimony is that in regard to the Clean Water Act there should be? Could you clarify that?

Mr. Johnston: There should be compensation for changes that are required as a result of the—

Mr. Wilkinson: Beyond that.

Mr. Johnston:—beyond what is currently required in 2005 regulations under the Nutrient Management Act and the rest of the acts that I listed. So if there are no changes required, then there's no compensation.

Mr. Wilkinson: Of course.

The Acting Chair: Thank you. Mr. O'Toole?

Mr. O'Toole: Yes, thank you very much for your presentation. I appreciate the work that your organization has done with respect to drainage and other activities.

I would say that what we've heard today is a couple of things: First of all, it's a public good and as such the costs should be shared by the public in some reasonable fashion as opposed to the end person. When I look at a couple of sections of the bill—on page 33, section 47, it says the total fees can be collected by a number of different means, one of which is just putting it on your tax bill. I look at things like the septic inspections; the fees and regulations should be set for that. For potential well inspections that may be required annually or testing of the water that we do today at public health offices—these fees and these other ways of collecting revenue are one of the things that concern me and I would like to see them specifically in the legislation statutes, as opposed to some regulation schedule.

How's your sense of that in terms of our hearing most of the people here concerned about the cost of this program and the province downloading most of the operational activities, the effect on small-town and rural Ontario? Do you follow the question here, about setting fees for such things as septic inspections, testing well water?

Mr. Johnston: I think what you're asking me is, should the province set out in the bill an allowable fee that can be charged by municipalities, or whatever the authority is that is doing the inspections, and that's it? From the perspective of a landowner, it would be good to know up front what your cost is. But the fee that's set by the Legislature either is going to be prohibitively high or they're going to have to have a permanent subsidy in place to pay the difference.

Mr. O'Toole: Just one other section—section 48 talks about the risk management—

The Acting Chair: Thank you, Mr. O'Toole. You've completed the question period. Sorry, our time is running out.

Mr. Tabuns.

Mr. Tabuns: Thanks for the presentation. I appreciate it. If I understand you correctly, you think that the municipalities that benefit from the protection of the source water should be paying for the protection of the source water. I just wanted to ask, following that principle, should large industrial water-takers, like water bottling

companies that depend on high-quality water, also have to pay for protection of the source of that raw material?

Mr. Johnston: Sorry, I misled you. I do not believe that the municipalities should be responsible for paying the cost of protecting source water. I think it's a provincial responsibility. All the citizens benefit. All the citizens are entitled to good, clean, safe water, so all the citizens should pay. It shouldn't come on the municipality.

If you want to know where the rumour about private wells getting metered comes from, it's from comments like that, where the users have to pay. The only way you're going to be able to charge a user with a private well is to know how much the private user uses.

The Acting Chair: Anything further, Mr. Tabuns?

Mr. Tabuns: No, fine.

The Acting Chair: Thank you, sir, for your presentation this morning.

Before we recess for lunch, there are a couple of housekeeping matters, both for members of committee and the deputants who are here or coming back. Although the hotel is secure, the room is nonetheless not locked. If you have personal belongings, please don't leave them in the room.

Mr. Leal: A very low crime rate here.

The Acting Chair: I know, but it's a precautionary matter for us all.

For the benefit of committee, lunch will be in the Riverside. If you're here in the hotel, if you would check out over lunch, and the bus may be out front at this point. If not, put the bags here, and we'll certainly arrange to have them on. We'll start again as precisely as we can for 1 o'clock. We stand recessed for the hour.

The committee recessed from 1200 to 1302.

The Acting Chair: I call our committee meeting back to order subsequent to our recess. Just a couple of housekeeping matters: For those who weren't with us this morning, the deputants each have up to 10 minutes to make the presentation to committee, following which there will be five minutes for questions from the committee. Those five minutes are shared among the three parties. I'll try to keep people as much on track as I can. When you start making your presentation, would you please identify yourself? We may have it in writing, but we'd like it verbally as well for the purpose of Hansard, which is keeping a verbatim record of the comments made as required by our committee hearings.

RIVERSIDES STEWARDSHIP ALLIANCE

The Acting Chair: Let's begin with our 1 o'clock deputation, RiverSides Stewardship Alliance.

Mr. Kevin Mercer: Thank you very much. Good afternoon, members. I am Kevin Mercer, executive director and founder of RiverSides, Ontario's award-winning international practitioner of watershed source protection against threats posed by non-point source pollution and the advancing pace of urbanization.

On behalf of our members and many supporters, I strongly recommend that the existing legislation be recommended for approval by this committee. The Ontario Clean Water Act is a seminal piece of legislation that reflects a positive step in light of its beginnings as a response to the tragedy of the Walkerton drinking water fatalities of May 2000.

Let me first speak to those who would degrade this piece of legislation or sanction its modification as less than what it truly represents: a commitment made to the people of Ontario to ensure the health and vitality of the water sources we rely upon for our most precious daily requirement.

For RiverSides, the heart of this legislation lies in the protection of source waters against both chronic and catastrophic threats to the security of the waters that form the two legs of the supply triad, groundwater and surface waters. The third, rainwater, is not generally utilized in Ontario as a drinking water source, although the protections required of the first two ought to apply as well wherever or whenever rainfall is utilized as a source of potable water, though not, I might add, as a non-potable source of water for purposes other than consumption.

It is for chronic degradation of watersheds and groundwaters that RiverSides asks the committee to request clarifications from this government. Too often, the loss of water quality is chronic, meaning that its degradation reflects death by a thousand sources or a steady decline in its quality as a result of unregulated sources of runoff or discharges. One example I wish to ask this government to address is the discharge to surface and groundwaters of chloride salts used for winter and occasionally summer roads maintenance. Road salts pose a chronic threat to the sanctity of water supplies, as evidenced by the degradation of the region of Waterloo's groundwater. It is to chronic degradation such as this that we ask this Legislature to apply the precautionary principle to the application of substances for uses that will, in time, threaten the security of Ontario's groundwater and surface-based drinking waters—excepting the Great Lakes, due to the extensive dilution factor of those water bodies. We encourage the Legislature to ensure that this government recognizes the chronic threat of chloride salts and takes action to address this issue.

RiverSides has asked, in a subsequent request for review under the Environmental Bill of Rights, the Minister of the Environment to rescind the exemption of road salts from environmental law—regulation 339 of the Environmental Protection Act exempts known contaminants used for winter roads maintenance; road salts are classified by Environment Canada as an ecosystem toxic substance—and thereby require permits for their use and the protection of the ecosystem from their use.

This is a classic example of what real source protection consists of: addressing known threats to the security and health of our waters before they become human health threats through their bioaccumulation or environmental degradation. The point of this is to encourage this committee to seek assurances from the minister and her government that watersheds will be protected, instead of

relying upon the barrier approaches described in the act to polish the water to the best of our ability while ignoring the overall degradation of the source itself.

RiverSides does applaud this government for taking on the challenge of establishing drinking water source protection on behalf of all Ontarians. The protection of those sources from pollutants begins where the rain falls, before it becomes rivers or groundwater. For this reason, it is essential that the committee not tamper with the responsibility of all property owners to take responsibility for the sanctity of the water that flows from their lands or which lies in the groundwater underneath their lands.

No one person has a right to pollute groundwater or surface waters in Ontario, although the practice of protecting these precious resources for both human and wildlife requires—it is for this reason that we encourage you to ensure that this government requires permits and provides those permits with the suitable enforcement measures to provide the sanction necessary to all property owners who protect our waters. This is a priority whose time has come and from which no one may shirk their responsibility.

As it pertains to the protection of watersheds, RiverSides encourages all members to recognize the importance not only of drinking waters but of the seminal obligation you have as stewards of the public good to ensure that this government exercise the strongest protection of watershed health.

In closing, RiverSides encourages the committee and the government to practise vigilance in the protection of watersheds against the loss of their health and security arising from poorly managed development, both existing and proposed. Ensuring the maintenance of the primacy of this act over all others is the cornerstone of that commitment. We encourage you to stand up for the health and protection of Ontario's watersheds through the acceptance of this legislation.

The Acting Chair: Thank you, Mr. Mercer. Questions will begin with Mr. Yakabuski.

Mr. Yakabuski: Thank you very much, Kevin, for joining us today. You've indicated clearly that you feel the breadth of this act should be expanded in its nature, and I respect your views on that.

The question I have, and it's a question we've asked most presenters here, is with regard to who's going to pay for the enforcement of these regulations, whatever is enacted at the end of the day with regard to the decisions. When you say "this committee," I'm quite certain this committee is going to be supporting the act because it has a majority on the government side. What is your position with regard to the bearing of the costs of this act? Should it be, as is the current situation, possibly the most massive download in provincial history to municipalities and property taxpayers, or should the responsibility for funding this plan go to the province?

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Mr. Mercer: The obligation for protecting watersheds and the waters that flow off people's property begins with the individual property owner. Responsibility cannot

be downloaded from one's own individual responsibility. Price, therefore, is a function of taking the actions individually that protect the waters on our own lands. As a property owner, I recognize my obligation to ensure that I do nothing that harms my constituent property owners adjacent to me or the groundwaters which other members of society rely upon.

As far as it goes with regard to the barrier applications, I believe this government has an obligation to provide the sources reasonable funding and capacity-building for municipalities, conservation authorities and the regions to undertake what actions are necessary to educate the general public with regard to prevention of pollution and the actual barrier prevention of pollutants to drinking water sources.

The Acting Chair: Mr. Tabuns.

Mr. Tabuns: Kevin, good to see you here. Could you expand a bit on the use of the precautionary principle in the application of this legislation and why it's important?

Mr. Mercer: The application of the precautionary principle in this legislation, I think, stems first and foremost from the primacy of the legislation, that we recognize there is no higher requirement of a piece of legislation than the protection of our drinking water sources. For that purpose, the precautionary principle applied both to land and to regulatory practices is a requirement that is embodied in pollution prevention. We see the obligation of all parties to this legislation, whether they be the government, the municipalities or the individual property owners, characterized as doing that which is the most important for the protection of the resource where we have the individual responsibility.

The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming in. This is a unique presentation. We haven't had this this past week. You were mentioning the example of the region of Waterloo and you were saying that there's concern about their water sources there having high salt content.

Mr. Mercer: Indeed.

Mr. Wilkinson: What they've decided to do is, they've taken this risk management approach. For example, if you want to have a new subdivision in the region of Waterloo, you have to have what are known as low-salt subdivisions as a way of, collectively, the people in that community coming together to take a threat and make sure it's mitigated so that it can't affect people's sources of drinking water. Isn't that the right approach rather than banning something?

Mr. Mercer: I never advocated for the banning of anything.

Mr. Wilkinson: Okay.

Mr. Mercer: I advocated for the permitting of a substance which is currently not covered by permits in Ontario. Our low-salt diet for Ontario's roads and rivers advocates that the minister remove the regulation 339 exemption of road salts from the Environmental Protection Act and subject users of road salts to permits under the act.

As per the region of Waterloo's low-salt approach, that's a primary example of the precautionary principle in play, by demonstrating that the application of a known substance that will have endangering effects on the quality of waters is being reduced via the risk management process. What is more important to recognize is that the road salts that currently threaten the region of Waterloo's water supply were laid down in the 1960s, so we have decades of cumulative impact which will continue to reduce the quality of well water that will have to be diluted by other wells.

The Acting Chair: Thank you, Mr. Mercer, for your response to the questions and your presentation.

ONTARIO WATERPOWER ASSOCIATION

The Acting Chair: The next deputation this afternoon is the Ontario Waterpower Association. As they're coming forward, just to remind those who might not be aware, there is a room adjacent with some chairs if after a period of time you find standing to be a little less comfortable than you would like. There's probably coffee or water still available.

Good afternoon. You can start when you like, and if you could identify yourself for the purposes of Hansard.

Mr. Paul Norris: Absolutely. Thank you, Mr. Chair and members of the committee. My name is Paul Norris and I'm president of the Ontario Waterpower Association.

By way of introduction, our association was founded in 2001 to represent the common and collective interests of the province's hydroelectric, or water power, industry. We were born out of the recognition by both industry and government of the need to construct public policy frameworks that addressed the new reality of a commercial electricity market in Ontario.

As I will discuss in specific detail, one key area of public policy designed at the time for our industry is water resource management. As I will describe, it's our view that the proposed legislation, while sound in its objectives, has a very real potential to create yet another duplicative layer of water-related regulatory and policy requirements for our industry.

I'd like to begin by providing the committee with an overview of Ontario's water power industry and our investment in water resource management. There are 200 operating water power facilities in Ontario. Collectively, they are responsible for the production of approximately one quarter of the province's electricity. Water power is and will remain the province's primary source of renewable energy.

Importantly, in the context of Ontario's proposed future electricity supply mix, our industry's contribution is expected to grow. Its ability to do so will be largely determined by the policy context within which we operate and develop generation facilities.

With respect to infrastructure, the water power industry in Ontario owns and operates less than one quarter of the estimated 2,400 dams in the province. However,

we are specifically subject to regulatory requirements that, in our view, already serve to achieve the province's interests with respect to water resource management. It is on this point that I would like to expand, and request that the committee consider the potential duplication of regulatory requirements for our industry.

In 2002, just four years ago, the government of Ontario amended the Lakes and Rivers Improvement Act to add a new provision with respect to water resource management. This new requirement under section 23 of the act reads in part that the minister—and the minister here is the Minister of Natural Resources—“may order the owner of the dam or other structure or work to prepare or amend, or participate in the preparation or amendment of, a management plan for the operation and maintenance of the dam.”

I'd like to point out two important facts related to the introduction of this new requirement. The first is that the province chose the Lakes and Rivers Improvement Act as a legislative vehicle by which water resource management for dam owners would be regulated. There were other options available and, as I'll discuss later, this appears to be a key issue with Ontario's water-related legislative framework. The second is that the province has chosen to order the preparation of these water management plans only for rivers that produce hydro-electricity.

I have brought with me and will leave with the clerk a copy of the guidelines referred to in the legislation, but would like to give the committee members a brief overview of what water management planning entails.

As described in the guidelines, the goal of water management planning is to contribute to the social, environmental and economic well-being of the people of Ontario through the sustainable development of water power resources, and to manage these resources in an ecologically sustainable way for the benefit of present and future generations.

Planning has been guided by the following principles: maximum benefit to society; riverine ecosystem sustainability; the use of best available information in science; a thorough assessment of options; adaptive management; recognition of aboriginal and treaty rights; and public participation.

Water management planning for water power, like the proposed approach under the Clean Water Act, is a locally driven public engagement process guided by provincial policy objectives. The guidelines specifically require that the public interest in water and water use with regard to the management of water levels and flows be addressed.

Over the past four years, the province and industry have collectively invested more than \$25 million in implementing the first cycle of water management planning, with investment in new data collection, monitoring, evaluation and assessment ongoing over the next seven to 10 years in preparation for the next iteration. It's our concern, therefore, that the proposed approach under the Clean Water Act does not appear to recognize these

considerable and recent investments undertaken by our industry.

I would like to acknowledge that it has been suggested to the industry by provincial representatives throughout the consultations on the bill that in the hierarchy of potential concerns with respect to drinking water sources, water power is very unlikely to be considered a significant threat. While we agree and appreciate this informal recognition, it is our strong view that unless this is proactively and provincially articulated, the individual planning processes will have the potential to require additional and unnecessary investments. Our experience with similar exercises supports this concern, and I'll share an example.

In 2003, almost exactly one year after the introduction of water management planning under the Lakes and Rivers Improvement Act, the province posted on the Environmental Registry proposed amendments to regulation under the Ontario Water Resources Act and improvements to the permit-to-take-water program. This proposal was directly linked to the government's clean water strategy.

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In response to that posting and to subsequent related policy and program initiatives, our association has consistently observed and maintained that the introduction of water management planning under the Lakes and Rivers Improvement Act had been designed to achieve substantially equivalent objectives to those being proposed under the Ontario Water Resources Act. In fact, if one reviews the revised purpose section of the regulation, the overlap and duplication are obvious.

A key point of relevance to the current discussion was the apparent recognition of the unique position of our industry vis-à-vis regulatory equivalence, yet the lack of any tangible policy progress to address this issue. As a result, we are now dealing with case examples of water power facilities with permitting provisions related to water resource management issued under two separate pieces of legislation, with identical compliance requirements, administered by two separate ministries.

As I hope you can appreciate, based on this recent experience our industry is not confident that water management planning has been adequately acknowledged as the primary public policy framework through which our industry is regulated. We are therefore concerned that in the absence of such specific provincial recognition, a similar duplicative outcome could be the result of local source water protection planning initiatives as designed in Bill 43.

I want to be clear, however, that the industry is not recommending that we not be required to address the province's water policy objectives; rather, that we already substantially do through a decision by the government to subject our industry alone to the provisions of water management planning.

A number of organizations have recommended that the province establish clarity with respect to the definition of “significance” in terms of threats to drinking

water. We would agree, as water power production is clearly not one of those activities and should therefore be exempt. In the absence of such legislative provision, the Ontario Waterpower Association makes the following recommendations in relation to the bill and its implementation:

(1) that the government and industry undertake a provincial analysis of the geographic and water resource management relationship of existing facilities, control structures and municipal water supply sources;

(2) that, based on that analysis, those water power facilities and structures having no relationship to municipal water supply sources be deemed eligible for the exemption provision under clause 100(1)(r) through regulation;

(3) that for those water power facilities and control structures determined to be in proximity to municipal water supply sources, the Ministries of the Environment and Natural Resources and the specific water power producers confirm that interests related to water supply are incorporated into the water management plan; and

(4) that, subsequent to such confirmation, those facilities be considered in the exemption provision.

Further, it is our view that such analysis can and should be undertaken prior to the establishment of source water protection planning committees in order to ensure that these local entities have the benefit of this provincial review and are able to direct their time and the government's resources appropriately.

Finally, I noted in Hansard from the committee's deliberations earlier this week that there was a question related to riparian rights that I believe was answered as follows:

"With a riparian right, an individual who has water flowing over or adjacent to their property would be able to make use of that water so long as it is returned without substantial alteration in the quality or the quantity."

I would point out that the production of water power is fundamentally a riparian right or privilege, and in most cases granted by the crown by virtue of the crown's ownership of beds of navigable waters. It is a privilege for which our industry currently pays \$150 million annually to the consolidated revenue fund.

In closing, I would like to reiterate our commitment to sustainable water resource management. However, as we embark upon an ambitious agenda of doubling our supply of renewable resources in Ontario, it's imperative that legislative, regulatory and policy requirements be aligned, rationalized and coordinated.

Thank you for your time. I'd be pleased to entertain any questions.

The Acting Chair: Thank you, Mr. Norris. The first question, Mr. Tabuns.

Mr. Tabuns: Mr. Norris, thanks for that presentation. As I understand it, it isn't that these regulations would pose difficulty for water power operators; it would just mean that you're engaged in more paperwork than is necessary and you think we should avoid putting you through that paperwork. Do I understand that correctly?

Mr. Norris: Yes. We would prefer that the province clearly acknowledge that water power facilities aren't the problem here and to give some guidance to local planning committees, which we're not.

Mr. Tabuns: Okay. Thank you.

The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you, Mr. Norris, and on behalf of all of us, thanks for the good work that your members are doing as we wean ourselves off fossil fuels for generation. You're making wonderful clean, renewable energy as a result of water power. We appreciate that.

My questions: You want to make sure that the work you've done doesn't have to be duplicated, which is a very sensible approach, but also that you don't get captured in a bill that inherently you wouldn't normally be captured in. That goes to the question—I know there's some consideration about whether under part IV, in regard to the use of risk management, the minister would be able, for certain classes of activity, to have a bit more leeway in there to clarify that so that you're not caught in having to reinvent the wheel with every authority. If we're able to look at that, do you think that should be able to take your concern and put it to bed?

Mr. Norris: Yes. Our experience over the last four years in water management planning is that the initial discussion is always about scope: What's in scope; what's out of scope? If the province were to provide some clarification specific to our industry, in recognition of what we've just been through, that would be most helpful.

The Acting Chair: Thank you, Mr. Norris. Mr. Yakabuski.

Mr. Yakabuski: Thank you for joining us today. It was an interesting submission. It makes perfect sense to me. I'm curious as to why this would not have been picked up and dealt with prior to this point. Obviously there are many, many things that are being shoved ahead and brought to summer hearings without real consideration of the need or necessity. This is bureaucratic siloing at its worst: duplicating something that has absolutely nothing to do with putting something into water. The only thing you're doing is taking something out of water, and that's electricity, which we need badly. We commend all you small hydro producers for the good work you do. Actually, I sense a smidgen of possible progress here on the part of the government side. We're hoping, not only in your case but maybe in the cases of some of the other submissions we have heard today and will hear later today, that there will be some common sense injected into this equation.

The Acting Chair: Thank you for your presentation today.

PETERBOROUGH COUNTY LANDOWNERS ASSOCIATION

The Acting Chair: Let's move to our third deputation of the afternoon, the Peterborough County Landowners Association. Welcome.

Ms. Bonnie Clark: My name is Bonnie Clark. I would like to thank you for taking the time today to hear from so many speakers. I think the fact that so many people have given up their Friday afternoon in the dog days of summer speaks to the concern we have in rural Ontario—and I say the county as well as the city, because we all are landowners and do have a stake.

I'm speaking on behalf of the Peterborough County Landowners Association. We want to be very direct and very clear. We, as rural people, have had enough. There certainly is a current, not unlike an underground river, but the current is gathering, it is becoming stronger and it is about to erupt. This is rural Ontario behind me, and I would not hesitate to say that we likely have the biggest volume of people sitting in on these presentations today, and that speaks for itself.

We are for clean water. It's a given, a motherhood statement, that no individual and no organization, certainly not this one, would ever dispute. We, as rural Ontario landowners, have been good stewards of the land and have no intention of being anything different. However, Bill 43, as it is drafted, leaves landowners feeling like they have been found guilty without trial. Indeed, it leaves us standing financially on our own. This bill will desecrate rural Ontario if it passes as it stands.

Bill 43 clearly gives absolute power to a designated inspector, appointed by individual municipalities, who solely can make a determination if a landowner is in fact partaking in an activity that is deemed a threat to drinking water. I take this as a direct quote from the bill. This in itself gives individual landowners the perception that we are appointing someone who is judge and juror. There are no specific triggers listed, and this is a major concern to us, leaving us questioning, what if?

Bill 43 also leaves enforcement of the act in the hands of individual municipalities and therefore begs the question, will enforcement be carried out in equal measures? I think that has been a big concern that other speakers have brought forward.

I ask you, as elected representatives, to take a step back from the bill, a bill that, as it stands, represents proposed legislation that we feel is flawed, a bill that legislates reverse onuses, those being placed on individuals. We feel that the responsibility for clean water needs to be collectively addressed and therefore rests provincially and with our collective tax dollars. I think that has been an ongoing theme here as well.

1330

Be leaders and good stewards of our water supply. First of all, map Ontario's aquifers. I did ask at a meeting in Uxbridge if this task had been completed. I know that it has been ongoing. The Ministry of the Environment representative confirmed that Ontario's aquifers have not been completely mapped. The government is legislating a resource we do not even have an adequate inventory on. Perhaps the cart is ahead of the horse, as we in rural Ontario would say.

I asked at this same meeting if any of our groundwater discharge areas have been identified as problematic. The

MOE representative chose not to answer the question, but in doing so, I think the question was answered. Therefore, I ask you, as our elected representatives, why are these hot spots not publicly announced and an action plan put into place that would rehabilitate and protect our water supply?

I ask us to all look into our backyards, and maybe especially the backyards of our densely populated areas, our cities. We are already aware that the GTA, with any significant rainfall event, cannot handle the volumes; therefore, the result is to bypass our treatment plants and spew into the Great Lakes system. City representatives scream that the cost prohibits expedient replacement of these ancient and malfunctioning systems. However, this act legislates that if an individual such as myself carried on the same type of practices, I certainly would be charged by the MOE and held accountable. We ask that all be held to the same standards as rural Ontario. It is absolutely mind-boggling that 80% of Ontario residents' drinking water comes from the Great Lakes and municipalities are allowed to carry on with these environmentally unsafe practices. We in rural Ontario individually pay for our private septic systems and feel cities should be held to the same high standards. We want to say to you today that if water is worth legislating, surely it is worth cleaning up problematic areas as well as unfit practices that we are already aware of.

Nitrates have been mentioned here again today, and they are of concern. Many feel manure handling is the top issue. However, we do have the nutrient management plan in place; we have soil testing; we have safe manure storage systems. And I say to you that as rural Ontario farmers, we want to be good stewards of the land. We first of all put these in place. We gave dollars in order to put them in and implement them, and now that dollar has been taken away. So to keep on educating and to keep on implementing this, put the dollars back.

I say to you that in rural Ontario we are light years ahead of industry and densely populated areas. Why are we not 100% funded if you want to protect source water? Educate and fund: That's been a theme throughout many of the presentations here.

Emergency backup plans when treatment facilities can't handle the volumes should not be our rivers and streams. Fifty per cent of the nitrates in our waterways are a result of acid rain, which is composed of acidic nitrates which come directly from automobile exhaust. Where is the legislation banning emissions? We all know that's big industry, and they certainly are in trouble. But individual landowners are asked to step up to the plate and pay for their practices, whatever they are. The coal industry is yet another offender, yet it is still allowed to continue to function. We, as the Peterborough Landowners Association, are asking that you, as government, be proactive, not reactive, and make the big players accountable. When that takes place, our drinking water supply can then, and only then, gasp a big breath of relief.

We have MOE, the Department of Oceans and Fisheries, the Planning Act, conservation authorities, the

Ministry of Health and nutrient management plans in place. Therefore I say to you, why set up another bureaucracy? The act apparently has a ticket value up to now, I understand, of \$67.5 million thus far. We ask you to direct the dollars to problematic areas.

We ask you to reflect on and think about Bill 43 and not to use it thoroughly as window dressing. Déjà vu: Is this not yet another bureaucracy such as the gun registry taking place? Individuals bore the cost, a bureaucracy was born, and the crime rate continues to grow. Can we not see that crafting a Clean Water Act does not make clean water? Focus on making the infrastructures of densely populated areas safe. Clean up landfill sites. Look at industry and commercial practices. That is what the voters want.

We are aware that the bulk of this resource is found in rural Ontario and we know the majority of the uses are found within city limits. Therefore, we ask that our communal tax dollars be spent to take care responsibly of this resource. We do not want this put over the back of individual landowners. The vast number of us purchased our properties long before Bill 43 was ever crafted, and some of us may lose the right of use and enjoyment of our land as we see it today. This is seen by many as a subtle form of expropriation without compensation, and we ask that that be addressed. We ask—

The Acting Chair: Thank you, Ms. Clark. I'm going to ask you to—

Ms. Clark: Can I read one more paragraph?

The Acting Chair: One more paragraph.

Ms. Clark: You have the opportunity to be leaders and to recognize that water is the new gold of the 21st century and a provincial responsibility. Be seen as a government that corrected problems, stopped offensive practices and cleaned up the hot spots. Take on the big guns and let rural Ontario enjoy and protect our environment, as we have already done. Thank you.

The Acting Chair: Thank you. Mr. Wilkinson?

Mr. Wilkinson: Thanks for coming in, Bonnie, and welcome to all the people who are here in support of you. You're right: It is a great showing today.

Ms. Clark: The biggest showing?

Mr. Wilkinson: Pardon me? Well, because you're the one doing the talking.

Ms. Clark: The biggest showing?

Mr. Wilkinson: The biggest showing? Well, we'll put that on the—the biggest showing today. There you go.

Just a couple of things. Actually, the amount of money over five years is \$120 million on the basis that, as you were saying, you have to map the aquifer. It's never been done. We got all of our watershed on surface water mapped when we created conservation authorities about half a century ago, but a lot of our great resource that you're talking about underneath our feet needs to be mapped so that people who are drawing on the same source can come together. Just like we do for conservation authorities in preventing flooding, the people in the same watershed work together, really, to put the

money upstream to help everybody along the river course.

My question to you, and I hear your points raised about fairness, is, if there's a model—and I asked the National Farmers Union this question. If someone can come to a farm and work co-operatively with a farmer, who is the best steward of their land, would they be welcome if they came with, "How can we work together," including resources? I think about the healthy futures initiative and the CURB program, which have been pretty successful in the past, and environmental farm plans. Does that approach work?

Ms. Clark: The approach of coming to someone's farm gate I don't think is an approach that will work. I think the approach is education and having the individual landowner knowing what is available and the funding in place to make that happen. I think you will get an overwhelming response for that.

1340

Mr. Wilkinson: Like a town hall meeting type of thing, where people can come out.

Ms. Clark: And just putting it out there, such as this travelling road show we have here today.

Mr. Wilkinson: Democracy.

Ms. Clark: A lot of us were not aware of it, and then we were told such and such a date, and that you may not be heard; you would be selected. That's the same kind of approach. I think education is the thing to do. I'm a registered nurse by profession, and we preach that in the health field. I don't think you can herd, for instance, all the people who happen to have a certain health problem, rap at their door and say, "I'm here to diabetic teach." It doesn't work. You have to have the people come to you, and you do that by educating them and providing the funds.

The Acting Chair: Mr. Yakabuski.

Mr. Yakabuski: Thank you very much, Bonnie, for your thoughtful and informative presentation. The process of mapping aquifers, and you talked about that earlier in your submission, has nothing to do with this bill; this bill is not necessary to map aquifers. I think your position that maybe we should find out where we are before we start deciding where we think we're going to go is a very good point.

I'm going to ask a question, and of course be as un-partisan as I can be: Do you think that this bill is another one of those things—and we see this from this government a lot—based on the popularity that it may enjoy in large urban areas, because the idea of source water protection—as you say, everybody believes in it, but they don't always understand the ramifications and the pain that it could inflict on rural people. Is it another one of these attempts to divide the rural and the urban, knowing that at the end of the day the urban has more votes?

Ms. Clark: I don't know if it is meant to divide. We all want water, as you say, and I think the urban area is heavily populated and certainly has more votes. Therefore, if you go to a tap and turn it on, you can do a lot of fearmongering when you are not front and centre. I have

my own system, and therefore I feel I am more accountable because I do not take it for granted to go to the tap and turn it on. I think we do a lot of negative press and put the fear in the public, and then we come out as the Big Brother or whatever that's going to protect the masses. Maybe this act is putting it out there: "We're going to protect you; we're going to take care of you."

I come back to some bad press in the Toronto Star from August 21, where Walkerton again is mentioned, E. coli is mentioned, the farmer is mentioned. I was not aware that there was any DNA testing to come out of Walkerton to know if it was bovine or not. Certainly, if the water had been treated appropriately, the people would not have been harmed. That was the end result I got.

The Acting Chair: Thank you. We're going to go to Mr. Tabuns.

Interjection.

The Acting Chair: Don't go yet. I'm just moving on to Mr. Tabuns. Each party has an opportunity.

Mr. Tabuns: Now for the bonus question.

Thanks for the presentation. You're very logical, you're very powerful, and it was very useful for us.

We heard from some folks near Napanee yesterday worried about their water source. They're near a proposed landfill site that's going to be expanded. Some of the farmers are worried about the quality of the water in their wells. Do you feel that rural water sources are at risk of being damaged by industrial sources like dumps?

Ms. Clark: I think the potential certainly is there. I don't think we can blanket-statement anything and say "absolutely not." I speak to one incident where septage was brought out from the city—I won't mention the city—to my municipality, and because it had slipped by the quality control aspects, we ended up vacuuming the land in order to pick up needles. So yes, we are all certainly at risk, and it's a resource that needs to be mentored and guarded. We need to do it collectively and with collective dollars. It's easy to take a little individual and landmark them, and then look as if we're doing good things. I want to look at the big players here who are possibly doing the major damage.

Mr. Tabuns: Okay. Thank you very much.

The Acting Chair: Thank you very much for your presentation.

TED COOPER

The Acting Chair: Welcome, Mr. Cooper.

Mr. O'Toole: Chair, I just wondered if there's any possibility: The group that's presenting at 2 o'clock has a large delegation of members in the hallway who would like to get in. Is there any way we could accommodate some change of persons in the room?

The Acting Chair: When the 2 o'clock delegation comes about, certainly I'll indicate if people would like to take a few minutes out, but I don't think it's appropriate for us to choose to—

Mr. O'Toole: There's no television broadcasting outside of this room.

The Acting Chair: I understand that, but we're limited. At the same time, we'll certainly indicate that there are people here for the 2 o'clock delegation who would like to spend the 15 minutes inside, and if others want to step out for a moment, that would be appreciated.

Mr. Cooper.

Mr. Ted Cooper: Thank you, Mr. Chair, and good afternoon. My name is Ted Cooper. I am here speaking as an individual. I am a resident of Mr. Yakabuski's riding, the county of Renfrew. I would like to thank the members of the standing committee for this opportunity to address you as part of your Clean Water Act consultations.

The basis of my oral presentation and written submission to the standing committee is from personal case study experiences that I believe provide an effective means to identify improvements required in existing complementary legislation to the Clean Water Act.

I am a professional engineer with 20 years of experience on a wide range of water resources projects throughout the province. Since 2002, I have been employed by the city of Ottawa as an infrastructure planner. Prior to joining the city of Ottawa, I worked in the consulting engineering business, primarily in the GTA and Kitchener-Waterloo areas, before moving to the Ottawa Valley in 1999, where I have since lived on Lake Clear in the township of Bonnechere Valley. The opinions expressed in my presentation today are my own personal opinions.

My written submission includes recommendations for the standing committee as a result of my experience on the following three case studies:

- (1) the McNabb drain of the township of Ramara;
- (2) the Carp River restoration project of the city of Ottawa; and
- (3) development on a highly sensitive lake in the county of Renfrew.

Given time constraints to address the committee, I will focus on just one of the case studies: the McNabb drain. Included in my written submission you will find a number of photographs, maps and articles that you may wish to refer to during my presentation.

The McNabb drain is located in the township of Ramara near Brechin along Highway 12 on the east side of Lake Simcoe in Garfield Dunlop's riding of Simcoe North. The drain has a relatively small watershed, just over five square kilometres, and provides a drainage outlet for agricultural and industrial land uses. The McNabb drain is but one of the estimated 30,000 municipal drains in the province of Ontario constructed under the Drainage Act.

The McNabb drain is not your average municipal drain. This drain was before the court of the Ontario Drainage Referee for 12 days of hearings between 2000 and 2004. It was the subject of the first-ever MOE director's order against a municipal drain in the province of Ontario. The McNabb drain was even the subject of a

preliminary hearing before the environmental review tribunal.

Despite the involvement of the Superior Court, provincial agencies and appeal bodies, if you ask the affected landowners what they think, they would likely comment that, while these administrative and judicial systems are intended to resolve public health and safety concerns, they have in fact exacerbated problems that have affected the area since 1998.

In his 2004-05 annual report, Environmental Commissioner Gord Miller refers to the planning of the McNabb drain as being "bad drainage planning."

I would like to draw your attention to the photos and newspaper articles in my submission. The photos show that water quality and flooding conditions have persisted between 1998 and 2006. The 2006 news article shows Joe Harrigan and his flooded farm. Joe lives on the west side of Highway 12, where the land uses are rural; on the other side of Highway 12, the land uses are industrial. Joe's farm is downstream from the industrial lands. The floodwaters on Joe's farm are from an industrial subdivision, from a quarry and from drainage off of Highway 12.

1350

Under the Drainage Act, drainage systems are constructed on the basis of the opinion of a drainage engineer. Other than needing to satisfy legislative requirements of the federal Fisheries Act, there's little or no environmental review conducted by any provincial agency or conservation authority.

Changes were made to section 53 of the Ontario Water Resources Act in 1997, requiring approval of municipal drains where drainage of non-agricultural lands is involved. Because the lands east of Highway 12 were industrial, I believed that the McNabb drain required approval under the OWRA.

With the legislation being explicit about the need for approvals under the OWRA, why should it have taken nearly 100 phone calls, e-mails and letters before I was able to get MOE to enforce the Ontario Water Resources Act? This is what eventually led to the unprecedented March 1, 2004, director's order being issued.

What was the township's reaction to receiving the MOE director's order? They requested a hearing two weeks later before the Ontario Drainage Referee, at which time motions were to be considered by the drainage referee declaring that the OWRA did not apply to the Drainage Act project.

So in March 2004, while the province was consulting the public on the white paper on watershed-based source protection planning, the cabinet-appointed drainage referee, who has the authority of a Superior Court judge, proceeded with a hearing on March 16, 2004, despite the fact that his term as drainage referee had expired. Had I not contacted officials at MOE to have them insist that the motions concerning the declarations about the OWRA be dropped, the Ontario Drainage Referee would have been considering motions in Superior Court on matters he had no jurisdiction over after his term as

referee had expired. I am not making this up. This is what actually occurred at the Superior Court offices in Barrie.

Mr. Chair and members of the standing committee, municipal drains constitute the headwaters of thousands of drainage systems in Ontario. Under the circumstances, I am very surprised to find that there is not even one reference to the Drainage Act or how agricultural drainage will be considered in the Clean Water Act legislation. If you think checks and balances are in place in existing legislation or that there is adequate enforcement of existing legislation, then I ask you to think of Joe Harrigan and the other landowners along the McNabb drain.

The current status of the Drainage Act, MOE director's order and Environmental Review Tribunal processes is that the OWRA applies only to areas east of Highway 12, where the land uses are industrial. But according to officials at the MOE, the OWRA does not apply downstream of Highway 12, where the land uses are agricultural. In other words, the review and approval of the drainage engineer's work is only required upstream of Highway 12. But downstream of Highway 12, where Mr. Harrigan's property gets flooded with drainage from industrial lands, no approval under the OWRA is required. Does this make any sense?

Rural water supplies are at risk because of the flooding. Mr. Harrigan's barn is now flooded annually. The wetland that was once holding water back on the east side of Highway 12 has been drained, and there is now little or no riparian vegetation throughout the entire watershed to moderate the flow of water or pollutants downstream, polluting other people's properties before polluting the beaches of Lake Simcoe.

Is this the best that 12 days of hearings before the drainage referee, the first-ever MOE director's orders and a hearing at the Environmental Review Tribunal can deliver? Just imagine the impact of similar projects affecting the water resources of the province, where decisions are being made in municipal offices without the involvement of any agencies.

I have identified specific changes to existing legislation in my written submission. These include changes to section 6 of the Drainage Act, subsection 53(6) of the Ontario Water Resources Act and subsection 6(2) of O. Reg. 681/94 under the Environmental Bill of Rights.

Furthermore, the last decision of the drainage referee concerning the McNabb drain has been appealed to Divisional Court. The hearing is expected to proceed this fall. The six grounds of appeal are outlined in the written submission. I would further recommend that the standing committee consider additional action depending on the decision of Divisional Court.

Each year, nearly 2,000 projects on municipal drains are authorized under the Drainage Act. This is a significant number of projects that, with the right programs in place, could represent a tremendous opportunity to establish long-term measures that not only provide farmers with the drainage they require but could also serve as a program to implement and retrofit conser-

vation measures along the province's 30,000 municipal drains, with the objective of increasing the protection of source waters.

I believe the overwhelming majority of farmers are interested in the protection and conservation of water resources of the province. One of the greatest challenges is making conservation measures affordable so that future drainage projects represent win-win opportunities for farmers like Joe Harrigan and downstream property owners like Christine Kaiser-Reid, the resort operator on Lake Simcoe.

Each year, the municipal outlet drainage program provides grants to farmers and municipalities. I would encourage the standing committee to recommend a parallel funding program that would direct funds specifically to the protection of source waters along municipal drains.

There are many lessons that can be learned from the McNabb drain. I believe the province needs to strengthen existing legislation protecting source waters. At the same time, I firmly believe a lot more will be gained by providing incentives to the farming community to implement source water protection measures along municipal drains. Thank you.

The Acting Chair: Thank you, Mr. Cooper. Mr. Yakabuski.

Mr. Yakabuski: Thank you very much for coming in and offering us your submission today, Ted. I appreciate that.

A couple of things here; you touched on two different issues, one which you cite as a glaring need to strengthen the Ontario Water Resources Act with regard to drainage, and then you also talk about the funding issue. Could the first be taken care of by simply strengthening that act? Then we move to the question of funding the Clean Water Act. The two issues are a little bit separate. If we saw a strengthening of the Drainage Act, whatever we're calling it here, we might accomplish your first goal. I guess my question is, then, what do we have to do to make Bill 43 acceptable to people not only in rural Ontario but all across Ontario, so that the cost and the responsibility of ensuring that water is safe is borne by everybody if this act is brought into legislation?

Mr. Cooper: I think one of the main problems is that there are inadequate human resources at many of the agencies. I believe that a lot of the work that is reviewed and approved in this province involves too little oversight. In such a scenario, those who have a lot of money at stake are the ones who usually get their way. Basically, if there could be more resources applied in projects such as the McNabb drain to oversee what is actually being approved and in part financed by the province, I think that's what's required.

Mr. Yakabuski: I guess I could say that farmers have a lot of money at stake. I don't know that they're getting their way.

The Acting Chair: Thank you. Your time is up. Mr. Tabuns.

Mr. Tabuns: Thank you, sir. It was a very useful presentation. If in fact funding is not provided to imple-

ment this act, do you think that it will actually achieve its stated goals?

Mr. Cooper: Of the Clean Water Act?

Mr. Tabuns: Yes.

Mr. Cooper: That's a pretty broad question. I think that most of the residents in rural Ontario are concerned about not only their generation but future generations, so I believe that a lot more can be gained by working with them, and where there are environmental regulations to be applied, that they be scoped in a certain manner that suits the particular risk. Quite often one size does not fit all. But even just by the fact that sometimes you have members of the public come out and make a certain small point, it can make a difference. The same might apply with, if I can call them, regulations on the farm. Maybe there could be a means for more staff people to come out and work with the farmers, as opposed to having regulations officers come out and work against them.

Mr. Tabuns: Okay. Thank you.

The Acting Chair: Mr. Wilkinson.

1400

Mr. Wilkinson: Thanks for coming in, Ted. Just so we're clear, the act, as drafted, contemplates that there would be primacy of whichever act does the best job of protecting source water, so you don't get into this endless stuff of going off to the courts trying to figure out which act, because there are so many acts involved. If there was a significant threat to drinking water, though, the Clean Water Act would come into application.

Because the kinds of matters you're talking about are before the courts, I would rather like to ask you a question, with your own personal experience as someone in planning, about the best way to ensure that our farmers can have well-drained fields, which they need in order to be able to have productive use of their land, and the ability to keep sources of drinking water safe. Can you give us examples of where those two things have been balanced and well done? I'm thinking of things like CURB and healthy futures.

Mr. Cooper: I'm only a little bit familiar with those programs; I'm sure a lot of the farming community here could probably comment better than I could. What I think is important is that when you look at programs like the municipal outlet drainage program, they principally focus only on drainage. Meanwhile, we all know that there's a lot more happening along those drainage systems. If the focus is entirely on drainage, there's no money given to consideration of some of the other things that are necessary along the way, such as filtering along those drainage systems, and there's always potential for considerable loss of wetlands. When that occurs, there could be other impacts related to erosion and sedimentation. In fact, when I mentioned that there are 2,000 projects, 1,500 of those are to go back and clean out these ditches, because the whole system is destabilized. So if there's a little bit better planning up front—one example would be in section 6 of the Drainage Act. That pertains to environmental appraisals. The way the act currently reads, anybody who requests an environmental appraisal has to pay for it. To me, that doesn't make any sense.

The Acting Chair: Thank you, Mr. Cooper. We appreciate your comments.

DURHAM YORK VICTORIA
LANDOWNERS ASSOCIATION

The Acting Chair: John Panter?

I understand from Mr. O'Toole that there are a number of people who want to hear Mr. Panter's presentation, if anyone wanted to step out. It's a little bit crowded, but that doesn't require anyone to leave either.

Mr. Panter, welcome. Just as a reminder for those who are here and following, the presentations are up to 10 minutes, following which there will be up to five minutes of questions shared among all three parties. If you'd just identify yourself, although I have, for the purpose of Hansard, that would be wonderful as well.

Mr. John Panter: Thank you. Some of us have been cooling our heels out in the corridor, so I assume Mr. Arthur is here chairing this meeting. Is that correct?

The Acting Chair: That's correct, sir.

Mr. Panter: Thank you, Mr. Chair and members of the committee. My name is John Panter. I am a landowner in Victoria county. Please let the record show that I am here today as a representative of the Durham York Victoria Landowners Association, which in turn is a member of the Ontario Landowners Association.

Bill 43 is such a tragically flawed piece of bad legislation that it probably cannot be salvaged with mere tweaking or tinkering. There comes a point in any construction project where renovation is not an option; demolition is far more efficient. Bill 43 will achieve clean drinking water, but at what price? And by "price," I do not mean the monetary cost.

The public is being hoodwinked by the government to believe that cheap drinking water is the most precious thing we have. It is not. The most precious thing we have is liberty. With liberty, we can accomplish almost anything, including the provision of clean water. Without liberty, clean water can be delivered, even to a concentration camp, but what would be the point?

One of the hallmarks of a true democracy is that only those bodies that are elected, and hence accountable to the people, may define, prosecute and punish criminal activity. Bill 43 sacrifices a long history of freedom and democracy in Ontario in exchange for the cheapest method, in dollar terms, of delivering clean water. It is a quick and dirty fix.

Under Bill 43, unelected and unaccountable conservation authorities and their privileged, hand-picked source protection committees are granted the powers that heretofore were the exclusive jurisdiction of elected legislative bodies. Unelected and unaccountable conservation authorities and source protection committees may now define criminal activity based upon whim or feelings. They may invade private property without the owner's consent and without warrant. This is the infamous knock on the door in the middle of the night, except that now they need not even knock.

Permit inspectors may bring along any unelected and unaccountable person having "special knowledge," whatever that means. Permit inspectors are only obliged to identify themselves if requested to do so by a terrified landowner who manages to keep his wits about him. They may use force as they choose. Once they are there, they may do anything which, in their opinion, the landowner is not likely to do even if he was asked nicely, which I guess is legislatively protected clairvoyance. These unelected and unaccountable thugs may do all of these things on the property of a completely innocent, unsuspecting adjacent landowner if it is more convenient for them to invade that person's property to get at the person or property of anyone whose activities they have decided, for whatever reason, to criminalize.

Of course, the law will be applied differently in different parts of the province. For instance, the South Nation Conservation Authority has said, in a joint press release issued with the Ontario Landowners Association, that they will not enter private property without the owner's consent and will leave if asked to do so. Other conservation authorities with a less sharply defined sense of democracy and justice will throw their weight around as much as they, on a whim, think reasonable or unreasonable, as the case may be.

Fines to be levied against landowners for activities which were perfectly legal until these committees of public safety—sorry, source protection committees—decree otherwise are horrendous and financially ruinous to all but the largest corporation, and possibly even to them as well.

Under Bill 43, it will be an offence to obstruct these thugs in the pursuit of their objectives, which is like prosecuting a rape victim for fighting back against her assailant. Thugs and thuggish activities are put out of reach and scrutiny by Ontario's courts under Bill 43.

Duly elected and accountable municipal councils will be ordered to co-operate with the activities of the conservation authorities and source protection committees. Once the monster has been created and placed above legislative bodies, it must be obeyed.

If it needs saying, there is no compensation available to the citizen whose activities would be perfectly legal until these unelected and unaccountable bodies decree otherwise.

Conservation authorities, which were originally set up after Hurricane Hazel with the reasonable objective of flood control, are now elevated to the status of unelected supergovernment. The one protection we had against them, the power of local municipalities to dissolve conservation authorities if they got out of control, is being eliminated by this bill.

Landowners are reasonable and responsible people. By and large, they don't foul their own nests. They are good stewards of the land that they own. They respect fair laws. They can read and understand criminal prohibitions and bylaws telling them what they can and can't do with property they own or are intending to purchase. Landowners, too, are consumers of drinking water. They

don't deserve to be treated like criminals, which is what Bill 43 does.

Landowners will resist what they perceive to be unreasonable and unwarranted intrusion on their lands, liberties and livelihoods by unelected and unaccountable persons with an agenda. Although I personally am doing nothing on my property which could be construed by any reasonable standard as a threat to drinking water, anyone designated under this act who comes to me asking for consent to poke around on my property will be denied that consent, and if he is discovered on my land without a court order, he will be ejected. I'm predicting that the first home invasion by a permit officer anywhere in Ontario will be followed by "This land is our land; back off, government" signs going up and tractor blockades at farm gates all over rural Ontario.

1410

What is a reasonable alternative to Bill 43? Education, information, co-operation, persuasion, technology, adequate funding for municipal water treatment systems, the setting of reasonable standards for drinking water, respect for the traditional concept of elected accountability and treating landowners as equal partners in maintaining a clean environment can achieve the objective of clean drinking water for all Ontarians.

Bill 43, on the other hand, is the abyss, the quick and dirty fix. Bill 43 is the subjective definition of criminal activity by unelected individuals and unaccountable committees. Bill 43 is the unequal application of the law depending upon the personal whim of this new parallel law enforcement agency. Bill 43 is the knock on the door in the night or the kicking in of that door. Bill 43 is the use of force. Bill 43 is the transfer of wealth from private citizens to the state. Bill 43 is denial of compensation for the taking away of a person's livelihood and property. Bill 43 is putting thugs out of reach of due process of the law and the courts. Bill 43 is government by privileged, unaccountable, unelected special-interest groups. Bill 43 is the abyss. It is time to back away from the abyss. Thank you.

The Acting Chair: Thank you, sir, for your presentation. Our questions begin with Mr. Tabuns.

Mr. Tabuns: Mr. Panter, thanks for coming here today, taking the time. I have to say I don't have a question. I think you were pretty straightforward, pretty clear. Even a politician can understand your message.

The Acting Chair: Mr. Wilkinson.

Mr. Wilkinson: Thanks, John, for coming. We appreciate it. Just a couple of things: We were talking earlier about the need to make sure that if there are any rumours, we have to post them at the Tim Hortons and the feed mill to make sure that they're not in the act, that there's clarity, just so we have a chance to have some clarity.

I'm looking at the act that we're debating today. There's a section that says that, by law, there can be no use of force applied. So that's in the act. You said there would be force, so there isn't.

The other thing about powers of entry: It says that "a person who is responsible for doing ... under section 56

or 57 may, for the purpose, enter" on "a property"—not a dwelling, but "enter" on "a property"—under two conditions: if "the entry is made with the consent of an occupier of the property." So the first thing is that you've got to get consent. The only reason you couldn't have consent is if "there are reasonable grounds to believe that the delay necessary to obtain a warrant ... would result in an imminent drinking-water health hazard." So it's very restrictive. It would be the same thing that allows the fire department to go onto my property without consent. I'm not there, but my house is on fire and it could pose a risk to other, adjacent properties. You're saying there's no warrant, but there has to be a warrant obtained. So what part of the act says that you can do that?

Mr. Panter: Thank you, Mr. Wilkinson. I don't have the statute in front of me. Certainly my reading is that the permit officer is obliged to give notice that he's coming but he can enter without consent. So giving notice and not receiving consent still does not deny the permit officer the authority to enter onto land.

Mr. O'Toole: Section 79.

The Acting Chair: Sorry, Mr. O'Toole, Mr. Wilkinson has the floor. Mr. Panter, thank you very much for your co-operation.

Mr. Wilkinson: In my reading, the act says there's only one exception to the normal course, which would be the same thing that applies to fire departments, which is if there are reasonable grounds to believe that there's an imminent threat to the drinking water of everybody else in the neighbourhood who is drawing that water as a source of drinking water.

Mr. Panter: An imminent threat is purely subjective.

Mr. Wilkinson: If a house is on fire, it's on fire.

The Acting Chair: We'll turn to Ms. Scott.

Ms. Scott: Actually, Mr. O'Toole wants—

The Acting Chair: Mr. O'Toole.

Mr. O'Toole: Thank you, Mr. Panter, for your presentation and your dogged observations at these hearings. I appreciate that. It's important.

I just want to clarify that what Mr. Wilkinson said is completely incorrect. As the parliamentary assistant, he should know. I'm going to read for the record section 79 of the bill, which he's defending. Here's what it says: "Subject to subsection (4), an employee or agent of a source protection authority or a person designated by a source protection authority under subsection (2) may enter property, without the consent of the owner or occupier and without a warrant ..." There, it's very clear. So I'm quite disappointed.

Now, "reasonable cause" and "just cause" are legal terms which would provoke an action to enforce some kind of rule or statute. It's in that vein; it's the kind of couched language of this bill that leads to the suspicious nature that most of the persons here observing these hearings have. It's clarity and plain language that we want. We all want clean, safe drinking water. To simplify, to put this in the form of a question, what do you recommend? I know you spoke of the abyss with respect to Bill 43, but what realistic recommendation would you

make to this committee as we proceed to the amendments section later on in September for amendments to this bill? What do you recommend to the government members specifically, because they'll vote this in? This will become law and they will not adopt one amendment that we make, and we would like to work with all of the stakeholder groups to find amendments so that we can improve the process of this bill. What would you recommend we do here?

The Acting Chair: There's approximately 30 seconds for your response.

Mr. Panter: As I said at the outset of my presentation, I'm not sure that tweaking and tinkering can fix this bill. I believe it ought to be scrapped. We have criminal law that prohibits the reckless endangerment of my neighbours. We have civil actions that, if I bring something on to my property that escapes onto a neighbour's property and causes him damage, I'm liable in damages.

Fisheries and Oceans Canada is constantly monitoring water courses in this province; we have municipal property standards bylaws, zoning bylaws. Just within the last year, the Ministry of the Environment searched in Lindsay and prosecuted the Lindsay water treatment plant \$25,000 for an offence—

Mr. Yakabuski: Don't we need more laws?

Mr. Panter: We need effective and reasonable laws. That's what we need.

The Acting Chair: Thank you, Mr. Panter, for your presentation and responses to the questions.

Mr. Wilkinson: Mr. Chair, I'd just ask a question of research. My good friend quoted section 79 but he didn't read the entire section. I was wondering if research could actually discuss the whole section, including the part that starts with "if," because that is the most important part of the section, not the beginning of it but the entire section. I'd ask research if he could prepare that for all three parties so that we actually get to see the entire section, not the parts that have been cherry-picked by my friend opposite.

The Acting Chair: Currently, all members do have copies of the bill and can certainly read through it in its entirety at their leisure.

Mr. Wilkinson: Well, you can cherry-pick whatever.

The Acting Chair: I appreciate the request, but I believe that's not a research question if it's the context—

Mr. Yakabuski: Mr. Chair, if I could comment.

The Acting Chair: No, Mr. Yakabuski, it's not a comment—

Mr. Yakabuski: Okay. If I could ask a question, then.

The Acting Chair: No. Not at this point.

Mr. Yakabuski: Oh, is it only the PA who can ask them?

The Acting Chair: As a matter of fact—

Mr. Wilkinson: There are people waiting, John.

Mr. Yakabuski: Is it only Mr. Wilkinson who can ask a question?

The Acting Chair: This afternoon, Mr. O'Toole and Mr. Yakabuski—

Mr. Wilkinson: I was denied, John. I asked and I was denied.

Mr. Yakabuski: At least he got to ask what he wanted to ask.

The Acting Chair: Mr. Wilkinson, this afternoon—

Mr. Yakabuski: Would you hear what I have to say?

The Acting Chair: I hear exactly. During the afternoon, Mr. O'Toole is the opposition sitting member and will participate. You can't move motions and can't vote, okay?

Mr. Yakabuski: I'm offended by that. I have participatory rights here. If there's a vote—

The Acting Chair: Save and except amendments and votes.

Mr. Wilkinson: Including the people who are waiting.

Mr. Yakabuski: Are we voting?

The Acting Chair: We are not at this point.

Mr. Yakabuski: Thank you very much.

The Acting Chair: At this point, we are not.

RON MILLEN

The Acting Chair: Mr. Ron Millen.

Sir, welcome.

Mr. Ron Millen: Thanks very much for the opportunity—

The Acting Chair: Just as you start, Mr. Millen, I know you may have been outside and it's a little hard, with the numbers of people, to maybe have heard everything we're doing. You have up to 10 minutes for your presentation. There will be up to five minutes of questions shared among the three parties. Again, if you'd just identify yourself, although we have it, for the purposes of Hansard that would be helpful, sir.

Mr. Millen: Thanks very much for allowing me the opportunity of presenting. I am reeve of Smith-Ennismore-Lakefield and I'm vice-chair of ORCA, but I'm not appearing here—I want to be clear—in either capacity. Our local county and ORCA, through the Trent Conservation Coalition, have made presentations. I am appearing as a taxpayer and a dairy farmer.

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I imagine you've heard everything there is to know about Bill 43 more than once in your meetings. There are many submissions and I don't want to be repetitive. I have read the chamber of commerce submission, the AMO submission, the Ontario Farm Environmental Coalition submission, the Dairy Farmers of Ontario submission and the Trent Conservation Coalition submission. I don't want to repeat those, but I do want to quickly draw out what I see as three common themes, and then I want to concentrate on two specific points which I don't think have been mentioned in anything that I've read.

The common theme is, everybody supports water protection and they certainly support prevention as opposed to treatment, because it's much cheaper to go that way. I'm not surprised at the turnout today because there are

considerable objections to this bill. You could group them in different groups, but it seems to me the first one is that it's undemocratic. The reason for that—there are a lot of reasons: People are afraid. It's enabling legislation; the regulations aren't there, so there's suspicion. The broad purposes of the bill are stated and then there are assurances that it's only municipal water supply, which seems to be a contradiction. It's very broad, with general definitions of "threat," very broad powers of inspection and unlimited powers of recourse. All those things are making people suspicious that this is somewhat undemocratic and lacks openness and transparency, and I thank you very much for these hearings.

The second theme is that this is a costly and inefficient approach. It's the punitive approach, the stick versus the carrot. This is particularly puzzling since we've had a lot of success, in my view, with healthy futures, the environmental farm plan and other incentive- and education-based approaches. It will be expensive to enforce and administer no matter who has that responsibility, and in some sense it duplicates the existing planning process rather than simply adding to the provincial policy statement and whatever.

The third general theme, of course, is downloading, unfairness to municipalities and landowners. I won't say anything more on that.

I want to take a little time and talk about two points that I haven't seen in the presentations that I have read, anyway; maybe you've come across them. The first point: Let's call it downloading revisited, a little twist on downloading. It's not just a download from the province to the municipalities or to landowners, but I think it's also a download from urban to rural. To the extent that funding falls through the conservation authorities, that's funded most of the watersheds. The implications will be in rural areas and most of the funding will come from rural taxpayers. Yet in my view, water is everyone's water and benefits everyone in Ontario equally. I think there's an argument that it's another urban-to-rural download, and that's a little different than what AMO may have presented.

The second point, and you probably haven't heard this, is that I just don't know that this approach is going to work technically. The assumption is that you can do a desktop exercise somewhere and come up with meaningful scientific results regarding municipal wellheads. Well, the first thing you need to do any scientific research is some meaningful data. I don't know if anyone has had a chance to look through some of the well data for Ontario; I have. I'll tell you, it's next to meaningless—the historic data, anyway; I haven't looked at recent data. Most well drillers just had to hand in something, and that's what they handed in.

I know that one well driller guaranteed water. Big surprise: Every report he handed in had at least five gallons a minute. But not all his wells had five gallons a minute. I won't mention names here; the gentleman's dead, actually. But when you go through the layers of soil that he documented, there's no relation to reality.

I've looked at some of this data. So how can you do scientific research on that?

If you could sit down and do a desktop exercise, why, when we're a siting a golf course, for instance, in Ennismore, would we require well tests? Somebody could just figure that out at a desk somewhere knowing the underlying rock structure. But we require pumping tests of the surrounding—you can't tell, in a fractured rock structure, which we have, with limestone overlying granite, the direction or the rate of flow of water. You need to do tests. I've read lots of reports on landfills, where they get the vector of direction and flow of the plume, but it's a similar thing. You need to do well testing to know with any accuracy.

We are putting a lot of individuals' money at stake on the results of a desktop exercise around a municipal well which has questionable accuracy. I do not doubt that we should do water budgets for big areas, for aquifers, which is a simple principle of water in and water out, including evaporation. I think it is time that somebody did that at MOE, and their water-taking permits should consider that, on an Ontario basis and on an aquifer basis. But the micro approach of what's underlying the ground—I call it "micro"—I just don't think is going to give meaningful results.

In any case, most of the water that we take municipally in this area and others is surface water, not well water. With surface water, as you know, we're talking about a two-hour flow, not a 25- or 10- or five-year flow around a well. Is that two-hour flow spring or summer? Somebody probably has an answer. But what's the logic of a two-hour flow? Within six months, what happens in Haliburton to the water will certainly be at Trenton, and maybe even at Montreal. It's everybody's water, and I think the conditions and restrictions, if we have to use them, are not meaningfully applied two hours upstream from an intake, and not meaningfully applied—that's my opinion—so many years flow out from a point, even if we could determine what that distance was.

Technically, I don't think this approach is going to work. I think there are approaches built on what we have done that will work. They take money. I think everyone benefits from the water; everyone should have the opportunity to pay. It's best done through the provincial tax system.

Perhaps I'll leave further comment. If you want to know some suggestions, I think it behooves anyone who criticizes to make suggestions on what would work better.

The Acting Chair: Approximately one minute.

Mr. Millen: Well, if I have a minute, I'll make my suggestions. I wasn't sure of the time.

Just like other environmental legislation we've added over the years to the provincial policy statement, we've said, "Thou shalt have regard for"—not that you'll just have regard for, but that "thou shalt be consistent with." If there are additional principles that we wish to be added, they could be. It could be implemented in the Planning Act, where the grandfathering provision is there

and right of recourse is there. We have health regulations coming through that way, and certainly fill line and other water provisions coming through. Why set up a whole new overriding bureaucracy, with committees and structures that aren't following existing political and planning lines and are just complicating the thing to no end? I don't think this thing is going to work. I'll tell you what it will do—

The Acting Chair: We're going to go to questions. Depending on the nature of the questions, maybe you'll have a chance to finish that thought. Mr. Wilkinson.

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Mr. Wilkinson: Thank you for coming in. I just have a couple of comments. I agree with you on the question about historic well data. That's exactly why the government has uploaded the entire cost of doing that hydro-geological study, because you can't base it on some of that data. I get a lot of those records, and there were a lot of five-gallon wells. We've been able to use some of the newer technology to actually go down into a well to verify the various structures underneath, and it wasn't even close. Again, this doesn't work unless that data is accurate. That's the process that the province is doing right now over this five-year period. I agree with you that if people don't agree on the science of it, it will be very difficult for people to buy into it.

Water budgets are actually required under the act. I know you were saying you thought it was very important that there actually is a water budget on the watershed so we know, in the big sense, how much is coming in and going out.

The concept here about going to the authority—it's much like conservation authorities. They were designed not on political boundaries but on who has to worry about flooding. The people who have to worry about the same river flooding are the people who should come together and deal with that and be proactive. So it's the same thing. This is based on the people who share the same source of water being part of it. The alternative—because they always say, "What's the alternative?"—is to do this through the ministry, through regulation out of Toronto, for the entire province. It's such a big province with so many people and so many different sources of drinking water. Isn't it better to do it as a community of people who share the common water?

Your other question was about who pays. If it's at the provincial level, would you say it should be the income tax that should bear that, as opposed to the property tax?

The Acting Chair: I'm sorry; I'm going to have to go to Ms. Scott. The time allocated has been used up.

Mr. Wilkinson: I'm sorry. I thought we had more time.

Ms. Scott: We can have unanimous consent to allow him to answer.

Mr. Millen: I would appreciate a chance to answer the question.

Ms. Scott: Unanimous consent for Ron to answer, and if I still get a question, Chair?

The Acting Chair: Is there unanimous consent, then, from each of the three parties? Yes.

Mr. Millen: You had a lot of points there. You know how costly it is to monitor a landfill and the wells. Are you going to do that for every well in this province? You're not just talking about municipal but any potential source of water. It's far too costly. I don't think, anyway, the water from one particular site—I think what they do to the water supply is affecting everyone. It's everyone's water supply. I don't think it makes sense to look at one particular site.

Why use the existing planning mechanism, the conservation act? We look at the fill line on a watershed basis, but the mechanism is there to implement it into the planning process at the municipal level, and the recourse action through the OMB. It's all there. Why reinvent the wheel?

What this legislation will do is relieve the liability from the provincial government, and the funding responsibility. What it won't do is work for the benefit of the water in this province.

Ms. Scott: Ron, you articulated very well the large download, that this bill is not going to accomplish what its title says, which is clean water, and its undemocratic, broad purposes. It's suspicious. It has created a lot of fear. I thank everyone for coming here today, because there is a lot of fear of what it does not say. There has been talk of how if you're going to do this, the money's available; the acts are already there. There has been a lot of talk of stewardship. I don't know if you know of Manitoba's stewardship fund. I know that members of the committee have been handed what they have in legislation.

Do you think it would even help this bill if there was a stewardship fund in the legislation, that there would be funds available, or should we just go back to the acts we have, which I think cover everything we want to accomplish?

Mr. Millen: I think this bill is so flawed that it would be hard to make minor modifications to make it work. It has some good pieces, like funding for water budgets and whatnot, and I think the conservation authorities do have a role on a watershed basis. But the basic approach to it, punitive versus incentive, is flawed.

How do we fund this? Anything would be welcome, because it is an important thing. If a fund could be created for it—straight provincial funding or shared provincial-municipal—I think private people, properly educated, will put a lot of money into the water supply on their own behalf.

Ms. Scott: I agree. Right idea; wrong approach. Thank you very much, Ron.

Mr. Tabuns: Thanks again for coming in and making a presentation. You were making recommendations at the end of your 10 minutes, and I don't think we got them all. Do you have more to say?

Mr. Millen: Yes. The water budget work—I think MOE were underfunded and never really got into water permits. They never really had the proper research, and I

know they were just handed out on an individual basis without an overview. I think that research has to be done. Walkerton was not just two inebriated individuals not doing their job. Partly we underfunded at the provincial MOE level and partly at the municipal level. So we all take responsibility for that. We need to put some more money into this and do it in a thoughtful way, not as a knee-jerk reaction to a situation in Walkerton.

The Acting Chair: Thank you very much for your deputation this afternoon.

PETERBOROUGH COUNTY LANDOWNERS ASSOCIATION

The Acting Chair: Our next deputation is the Ontario Landowners Association—Peterborough. Good afternoon and welcome. Again, as you've been here for a bit, if you'd identify yourselves for Hansard, that would be helpful. If you have your watch, that's great. If you get close to a minute, I'll just give you a notification.

Mr. Mike Posavad: Thank you. Mike Posavad, Peterborough County Landowners Association.

Mr. Gary Otten: Gary Otten, Peterborough County Landowners Association.

Mr. Posavad: In the spirit of democracy, as Mr. Leal stated in the paper a few days ago about "democracy in action," there are a lot of people here who obviously didn't know about having to register, or who did register and weren't able to get on. I know the Legislature's not in session. It's Friday. I know you're all enthusiastic and like the democratic process. I'm just wondering if the Chair has a problem with these people actually staying there and giving their questions when this is all over.

The Acting Chair: From the standpoint of the committee, the three parties have a structured process that we use. It does provide an opportunity for people to submit their interest. Not everyone can be selected, unfortunately. Certainly the parties try to ensure that they get the greatest cross-section possible, and we encourage written submissions. I think there's still time for those to be submitted, either directly or through the local member, as the case might be.

Ms. Wynne: Mr. Chair, can I just clarify, too, that everyone who applied to speak was offered a time to speak because there was time yesterday in Bath and there was time in Cornwall. So everyone who applied to speak to this committee was offered a time to speak.

The Acting Chair: Thank you. From that standpoint, those who had taken the opportunity of the submission process had that opportunity.

Mr. O'Toole: On a point of order, Mr. Chair: Just to bring some clarity, generally the way the committee process works—and these hearings are being held because the opposition held this government to account. Also, during the summer, quite frankly, people don't pay as close attention. So in fairness to his suggestion here, we're here to listen and I can assure you you will be heard.

Mr. Posavad: Yes, because some people didn't even realize there was a deadline to apply.

Mr. O'Toole: Yes, I know. They don't have Internet or whatever.

The Acting Chair: Unfortunately, we are scheduled for the balance of the afternoon with the deputations on behalf of those who are present now.

Mr. Otten: The problem I see with this is that there was no media attention given to the public, so most of them didn't even know they had to register to speak.

The Acting Chair: It's unfortunate. We have 10 minutes for your presentation, if you'd like to begin.

Mr. Posavad: It will be a lot shorter than that, so hopefully more time for question and answer.

My voice today is the voice of the large membership of the Peterborough County Landowners Association. First and foremost, I would like this committee to know and recognize that landowners are very much in favour of the environment and clean water. Most of us are major shareholders of lands that Bill 43 and several other new acts will affect.

The authors of these new acts hail the benefit for the public good, when in fact these infringements will send a ripple effect of financial loss through our farm industry, building industry, real estate industry, and ultimately the private landowner, while they shoulder the burden of the costs to comply with the enforcement of these acts.

The weight of these environmental acts, effectively without compensation, impedes a property's use and value, hanging like a black cloud of unregistered liens waiting to explode into environmental enforcement, litigation or expropriation.

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Our freedoms in this country are being ignored and jeopardized by newly formed bureaucracies, created by our provincial Liberal government and hidden under the banners of brilliantly titled environmental protections, designed for them to feast from the taxpayer's plate, while starving our health care system, social programs and our elderly.

Obviously, not all public consideration has been taken into account. If in fact an act is created for the public good, due consideration must be given to constitutional rights. To all whom it affects financially, the burden of these costs must be shared by all to fully compensate those affected. All the acts invariably ignore our rights of peace, enjoyment and uninterrupted use.

Since the passing of the Constitution and the inception of the charter, our property rights have been conspicuous by their absence. It is this absence that has led to the formation of the landowners' association. Let this committee know that the landowners' association takes a firm stance of non-compliance with Bill 43 or any other act that is perceived to eliminate our inherent constitutional property rights.

In closing, I want each of you to know that the landowners' association isn't going anywhere. We'll be a thorn in your side until our demands are met. Mr. McGuinty wants to discriminate against us because our

voting power may seem relatively insignificant. This is not a threat or a warning, but a promise. The Caledonia crisis will seem relatively insignificant if the government continues down this road of injustice and legislative land fraud.

The impact on the urban areas always seems to be a fraction of what it is on rural Ontario. Our numbers are small and growing but our resolve is unending. The decision is yours. If you want a battle, we are prepared to win the war. With the lack of intestinal fortitude coming out of Queen's Park these days, we are confident that ours will be the ultimate victory.

The Acting Chair: Thank you. Our question period starts with Ms. Scott.

Ms. Scott: Thank you very much for your presentation. The landowners' groups have been presenting, I guess, four out of the five days, so that's been a good representation. I'm happy the government has been able to listen to the ones that have been able to get on. I do apologize. We tried to get it advertised as much as possible to notify people.

You've talked a lot about how this is going to affect rural Ontario. I represent a rural Ontario riding.

Mr. Posavad: I'm actually in your constituency, in Millbrook.

Ms. Scott: In Millbrook? I have a large constituency. Thank you for appearing before us today.

I know Gary and have worked with him before. What do you think it's going to do to our land values in rural Ontario as this bill stands right now?

Mr. Otten: This doesn't just affect farmers; this affects all of rural Ontario. These acts that are legislated against private property, as Michael said, hang like clouds of unregistered liens. As a realtor selling rural properties we have to disclose anything that may affect the value of the land. If I were to disclose this act to you and the costs that may be downloaded on you, if I were to disclose the Oak Ridges moraine act or if I were to disclose the Endangered Species Act, if I were to disclose the numerous acts that this government has come out with, not one of you would buy a piece of rural property in Ontario.

The Acting Chair: Mr. Tabuns.

Mr. Tabuns: Thank you, gentlemen, for coming and presenting today. If this act were modified so that in statute there was a commitment on the part of the provincial government to fund the improvements that were necessary, either on a co-operative basis with landowners or in whole, would that substantially address the questions that are of greatest concern to your members?

Mr. Posavad: There are a lot of things that would have to be looked into. I know it was stated earlier about being able to enter or not enter property without a warrant. As I read it—I don't have it with me—it did say that you can enter without a warrant for the purpose of studying the aquifers and everything else, not necessarily to look for anything. That's what it says.

Mr. Yakabuski: Section 79.

Mr. Posavad: Yes. It doesn't elaborate anything after that; that's what it says. So someone can come on my

property and say to me, "I'm just here to do a study." I'm not going to trust anyone. First of all, from a liability standpoint, I'm not going to let someone walk around my property. I'm going to have to go with them, which means I may have to take a day's holiday, which I've done today to come here—my own vacation day and things like that.

People can come onto adjacent properties. Like someone said—Gary and I happen to be neighbours. I'm not going to let someone on my property, because they can try to spy on him because he's putting up some sort of resistance to letting them on his. I think that's totally wrong. It's not our system of justice, our system of laws. I think it's a farce. I don't think it's—you say "democracy." That's a very skewed look at democracy if that's something they will allow. There's that.

In studies before, they said, "Okay, we're coming on just to map the aquifers" or whatever, that type of thing. I don't have a farm. Most of our people in the association are farmers out in rural property. I don't have a farm, it's never been a farm, but how do I know that someone isn't going to come on and say, "There was a dump at the back of your property 50 years ago"? And now I'm responsible for it? That's just not right.

If I can ask a question, are they allowed to test my own well? I take my samples in to the Ministry of Health and they've always come back clean, so there's no cause for them to even want to test my well. But it allows them to in the act. It says they can come on for these studies and everything else. I just think it's an inherently bad thing from our form of justice.

The Acting Chair: Thank you very much. Mr. Wilkinson.

Mr. Wilkinson: Great. Thanks, Mike and Gary, for coming in.

When we were in Cornwall, Randy Hillier was around. He made a presentation. I was asking afterwards, kind of to Mr. Tabuns's question—the biggest concern seems to be about making sure that co-operatively we can work together so that if there is a threat to the common drinking water, it gets addressed, and that there is a mechanism of making sure that it's fair. I asked him, "Will that work?" He said, "Yes. As long as it's fair, that's really our issue." Am I missing that? I hear your concerns.

Mr. Otten: First of all, I have to say that new legislation of any kind once again affects the value of many people's assets that are a big part of their retirement plan. If you hang these acts, one after another after another, on rural Canada, people won't have any monies out of their properties. It's impossible to sell a property that's encumbered by so many acts. We have to disclose; under buyer agency you have to disclose. You have to take into consideration that when people buy these properties, they purchase them unencumbered and they pay a premium for them. Our government was right there to collect the land transfer tax and now they're right there trying to steal all the property rights back.

Mr. Wilkinson: You're a real estate agent, right, Gary?

Mr. Otten: Yes.

Mr. Wilkinson: Do you have to disclose if a property is on a flood plain, according to the conservation—do you have to disclose that?

Mr. Otten: Certainly.

Mr. Wilkinson: Yes, and then there's some grandfathering. But if somebody wants to build more on the flood plain, then the conservation authority says, "That's not a really good idea." But they could actually say, "Don't build a new structure on a flood plain," right?

Mr. Otten: Right, but you have to remember that right now in the last five or six years you've encumbered rural property, so you can't do anything on it. You can't sever it for your kids. You can't do anything.

In the Oak Ridges moraine, to put an above-ground pool on your property you need an environmental assessment so you don't set your pool on an endangered species of weed.

The Acting Chair: I'd like to say that, because you took a relatively short period of time at the beginning, if you would like to take another minute or so in your final comments, we would certainly entertain those as well.

Mr. Otten: Please ask.

The Acting Chair: I'm going back to the deputant who didn't use the allocated time for their presentation.

Mr. Posavad: Your clerk told me ahead of time, though, that we would have—I told him I only had a few minutes—the full 15, whether that was through questions or for our own comments.

The Acting Chair: Again, it's up to the committee if they want to entertain additional questions.

Mr. Posavad: In the spirit of democracy, as I say.

Mr. Wilkinson: Just go around one more time? Sure.

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The Acting Chair: Starting with the official opposition. Mr. Yakubuski?

Mr. Yakubuski: Yes. I just want to clarify what Gary is talking about there. My wife is a real estate agent, and there used to be a premise that, boy, if you had land, you were in good shape, man. Now, it's the curse of knowing that you're going to pay taxes for the rest of your life because you can't sell the damn stuff. There are so many encumbrances on it that when you go to sell it, the first thing they ask is, "Where can I build a house?" Well, actually, you can't because it's been deemed a sensitive area and this and that. So you've actually got the burden of, for the rest of your life, owning this chunk of land that you can't do anything with. You can't sever it; you can't sell it for monetary gain. So what Gary is saying is absolutely right, and this government seems bent on making sure that that's perpetrated forever.

The Acting Chair: Any response?

Mr. Otten: I agree totally. The other thing, in the spirit of democracy once again, we did have more members who wanted to speak and they weren't allowed.

The Acting Chair: I think we'll move to Mr. Tabuns.

Mr. O'Toole: Chair, I'd like to move a motion seeking unanimous consent to extend the hearings in the

further days so that all voices of the province of Ontario can be heard.

Mr. Otten: Thank you. That would be democracy.

The Acting Chair: We don't have the authority to—
Interjection.

The Acting Chair: Sorry, Mr. O'Toole. You tried to move a motion. I want to explain that the motion wouldn't be in order. We have been authorized by the assembly to hold particular hearings at particular times and we did have two days, as Ms. Wynne pointed out, in which the spots were not filled although there was time allocated for all those who might have expressed an interest by virtue of the ads and the like that were available. So the motion itself would not be in order.

I'm now going to move to—

Mr. O'Toole: Then I would just seek unanimous consent that we extend the hearings for today only.

The Acting Chair: My understanding is that we don't have the executive authority to do that. We've certainly heard from everyone. We will be hearing before the day is out from all those who had submitted—

Mr. Otten: Excuse me, sir, we haven't heard from everybody because they've had to stand out in the hall because you don't have enough room for everybody to get in.

The Acting Chair: Sorry, Gary. We have heard from all those who have submitted to be heard as per the processes that we are obligated to follow.

Mr. Tabuns.

Mr. Tabuns: Again, thanks for staying here and continuing to put the point of view as you put it, quite ably, quite strongly. Do you see a problem with water quality in rural Ontario? Is there an issue here now that has to be addressed?

Mr. Otten: Absolutely not. On the alternative, actually, because our water is clean, all of a sudden now our government wants it. It's the big cities that have got the problem with the water quality. All you have to do is take a drive through them and have a look at the rivers flowing through them. I guess if I was in the state of disrepair that the big cities were in and the environmental hot spots not being looked after, I would certainly be outsourcing for clean water. Because we've been good stewards and looking after it, now they want to steal it.

Mr. Tabuns: Straightforward answer.

The Acting Chair: Thank you. Mr. Wilkinson?

Mr. Wilkinson: This job is all about problems and solutions, so what is the best way to make sure that the sources of drinking water that everybody draws on stay safe?

Mr. Otten: I have a very difficult time understanding why you keep attacking us on that issue. As I said, I sell rural property and I'm very much involved in water samples. In our area I don't come across much contamination at all, if any. Mostly it's coliform, if anything, and the waters are tested. As far as our waters being safe, I think if we want a more effective measure, then there's only one way to make it effective: The funding comes from the provincial government to the rural property owners.

The Acting Chair: Thank you very much for your presentation this afternoon and your response to the questions that were posed to you. Thank you both.

Mr. O'Toole: Chair, I have a question for research. I just wondered if in the early drafting of this bill, was it not initially requested that it be municipal water systems?

The Acting Chair: A question for research?

Mr. O'Toole: Yes, because in the earlier draft it was municipal water systems and they've changed that to all water systems. That's the deal.

The Acting Chair: Gentlemen, thank you very much for your presentation.

Mr. O'Toole: I'd like an answer from the non-political aspect.

The Acting Chair: Certainly. Research has no knowledge specifically of the early drafting of legislation. Research relates, I believe, to the bill once it's presented to the Legislature, so the early drafting is not under their domain. It's under the domain of the ministry.

EDGAR CORNISH

The Acting Chair: Let's move on to the next deputation. Wayne Fallis?

Interjection.

The Acting Chair: We understand Mr. Fallis may not have been able to be here this afternoon. Edgar Cornish?

Mr. Yakabuski: On a point of order, Mr. Chair: Given the fact that Mr. Fallis has not showed up and will not show up, can we then extend at least for one more submission?

The Acting Chair: No. It would obviously be difficult at best for this committee, if nothing else, to select from all of those who might generally have an interest. Irrespective of Mr. Fallis's not being able to be here, he may have assisted us inasmuch as we're able to keep those who are scheduled able to make their presentation when they had hoped to make their presentation and not later than that time.

Mr. Cornish, if you would—gentlemen?

Interjections.

The Acting Chair: If Mr. Fallis arrives, certainly he would still be able to make a deputation to us.

Mr. Cornish, it's a pleasure.

Mr. Edgar Cornish: Good afternoon. Ladies and gentlemen, my name is Edgar Cornish. I have been a full-time beef producer in Peterborough county for the past 42 years. My wife Marie and I have three sons: Two are married and are part-time farmers and one son is full-time. I am a third-generation farmer. Between us, we own over 450 acres; we rent another 400 acres. We maintain a beef cattle herd of around 350 head.

Protecting the environment plus existing and future sources of drinking water is certainly a high priority for our farm family, because we drink the water from beneath our land and we eat the food grown on it. We may have more at stake than our urban friends, as we do not have access to municipal treated water.

We have always tried our best to be responsible and caring for the environment. Our livelihood depends on it; our health demands it. In the mid-1980s, we were the first farm to do work in conjunction with the Otonabee Region Conservation Authority in follow-up to the Indian River water quality study. I have taken the livestock medicines course, grower pesticide safety course, done environmental farm plans for our two farms plus two rented farms and also done the third-edition farm plan. In 2002, my submission for a best management practices demonstration site proposal for protecting surface and ground water on our farm gained approval, and the work was done in 2003. But I'm really no different than the vast majority of rural landowners.

When I read Bill 43 as printed, it lacks common sense, reality and fairness, but it will create jobs—lots of them, and high-paying. It's also shaping up to be a major cost for rural landowners, farmers in particular.

In Canada, one is considered innocent until proven guilty, even if it's murder, rape or robbery. If you're a rural landowner or farmer, Bill 43 kind of makes one guilty unless we satisfy the powers that be that we're innocent by means of a risk assessment. Even with an expensive positive risk assessment, we still may end up with use restrictions, lost land values and no compensation. Is that what rural Ontario deserves? Let's not turn risks, threats and things into mountains. They are only a small part of the equation, so why not handle them in that manner?

Because of time limits, I'm not going to comment on the positives, but will focus on areas of concern. The first area of concern is the duty of a hearing officer:

"Protection from personal liability

"(4) The hearing officer is not personally liable for anything done by him or her in good faith in the execution of his or her duty under this act or for any neglect or default in the execution in good faith of his or her duty."

This is not acceptable. If this person is not liable for their neglect or default or anything done by them, then I would suggest the act be amended to apply this same protection to landowners.

1500

The next concern is with inspections, subsection 54(1): "... a permit inspector may, for the purpose of enforcing this part, enter property, without the consent of the owner or occupier and without a warrant," and it goes on to an (a) and (b) explanation.

In Ontario, employers are subject to health and safety rules. How can our government put an inspector at such risk with no warrant or backup? One only needs to think back a couple of years to what happened to four RCMP officers in the west. Something to think about.

My other major concern with non-consent entry is the risk to an inspector because of the presence of guard animals, the danger of cows or bulls turning ugly with strangers, electric fences and not securing doors and gates. As well, many farms have a biosecurity protocol.

We get into inspections, subsection 54(18): "If property is entered under this section, the permit inspector

shall, insofar as is practicable, restore the property to the condition it was in before the entry.”

Question: What becomes of the additional expense to finish the restoration? Is this just another expense for the property owner? Thanks but no thanks.

In regard to doing “a thing,” subsection 56(2): “The permit official shall give notice of an intention to cause a thing to be done under subsection (1).” Then, under subsection 56(3), “A person who receives a notice under subsection (2) shall not do the thing referred to in the notice without the permission of the permit official.”

You’re told to do a thing but you can’t do the thing without the permission of the person who told you to do the thing. I just wonder, did somebody get paid too much money to write this act?

The next concern is number 70, the risk management plan. This will be a major landowner cost. There’s risk in cars, guns, knives and even walking down the stairs. Let’s cut the crap and deal with the problem. There is no need spending megabucks for every landowner to have a risk plan. Most landowners are responsible people.

The next concern is number 79, power of entry. It is also granted without consent to the employees or agent of a source protection authority. Again, similar concerns as previously mentioned with the permit inspectors.

Then we get to number 83, expropriation. “Expropriation” is almost a dirty word when you talk about rural lands. In many cases, rural land is a person’s equity, home, income, livelihood and future. It’s kind of ironic that the Ministry of the Environment can make regulations that establish source protection areas and yet the same MOE gives out permits to pollute. For example, sewage treatment plants all have a bypass pipe out into the nearest water. Last night on the late news, Lake Simcoe just happened to be the lucky recipient of some of this so-called water that’s undesirable. And the MOE is looking into it today. Thank goodness, eh?

Also, there are hundreds of publicly owned sources of pollution that have been identified and seem to be overlooked with this act.

In closing, if governments and society want landowners to buy into Bill 43, then we need to talk compensation for things like loss of use, risk assessment, loss of equity, loss of land values, loss of income, relocation and many others. If Bill 43 will benefit all of society, then don’t dump the costs on rural landowners.

We cannot accept hired employees not being liable for their neglect or their default. That’s unacceptable.

Power of entry: Somebody better give their head a shake on this one. This is a risk with a capital R. In Ontario we’re trying to make our water crystal clear. In British Columbia they are actually dumping fertilizer into lakes and rivers. A news release from March 14, 2000, states that BC biologists ordered 34 tons of fertilizer briquettes to be scattered in 29 island rivers in 2000. This was based on 10 prior years of fertilizing the Kootenay Lake, in which they increased kokanee spawning from 250,000 in 1991 to two million in 1999. Water can become too clear to sustain plant and animal life. This surface water recharges our groundwater.

Final question: Are we going to extremes here, and at what cost?

I thank you for the opportunity to address this hearing on Bill 43 and I look forward to any questions.

The Acting Chair: Thank you, Mr. Cornish, for the presentation. We’re going to begin this rotation with Mr. Tabuns.

Mr. Tabuns: Thanks, Mr. Cornish. I’m sorry; I missed the first part, but I did get a chance to read through your notes.

If, in amendment of this act, a section was put in that required the provincial government to contribute to the costs, in whole or in part, of dealing with protecting water sources, would that turn the temperature down on this issue a bit?

Mr. Cornish: “In part” might not do much; “in whole” probably would. I believe strongly that this should be paid 100% by the government. Where does the government get its money but through taxes? We all contribute. This way, we’re all contributing. It’s one central body that’s looking after it. If I’m doing something illegal that is against what everybody is thinking should be done, fine, I should pay for it. But in this case it appears as though a lot of expense could come down the tube that could jeopardize a lot of future generations on the farm. In the farm community for the last five years we have basically been raped of our income, a lot of our equity and some of our future. We don’t need another burden like this.

Mr. Tabuns: Okay. Thank you.

Mr. Wilkinson: Thanks, Edgar, for coming in. You were talking about your own farming experience. I’d say you’re exactly an ideal farmer in regard to being an environmental steward.

Mr. Cornish: I’ll give you a quarter for that statement.

Mr. Wilkinson: Do you want me to share that with your wife?

The question is how to take your behaviour, which I think everybody in the room would agree is the right behaviour, and make sure we’ve got a mechanism so that as neighbours we can make sure that is being done everywhere, particularly if that farm or business or whatever activity, whether it’s the government or private, poses a significant threat to the source of drinking water that everyone is drawing. That’s the intention. We’ve all said we want clean water, particularly the water that we’re going to drink from. So how do we take your example—you’re the kind of guy who should be on one of these source water protection committees, because you’re a farmer and you’re someone who can say at a committee, “Hey, we do this all the time. This is exactly what we do.” What do we need to do to encourage people to have environmental farm plans on all the farms, particularly farms where there is a problem?

Mr. Cornish: You need to throw away the hammer and go in with a common-sense approach.

I’m going to refer to the Ontario Farm Animal Council. It’s a council that’s set up so that if there’s a problem

with livestock in the community, they get a call and they contact somebody in the area.

I used to be a director on the Ontario Cattlemen's Association. I had three calls to go and visit farms where there were complaints. You go in, and you have no authority to be there; you just tell them that there has been a complaint, then ask to come and discuss it with them, and if we can make things better, so be it. If they don't want to talk to you, you leave. Everyone was willing to talk to me, even though I didn't know them. Maybe they knew me from the county. One operation was 100%. Another operation actually got rid of the young cattle, because they didn't have feed to handle them and they knew that somebody had been watching and seeing what was going on and kind of blew the whistle but didn't blow it out of proportion and get it in the media. The third operator was a part-time farmer. A particular township was having problems with his cattle running on the road and couldn't get anywhere with him. I got a call to go and visit him. Within two weeks, we loaded the cattle on a truck, we took them to the sale barn and we sold them. He wasn't able to look after them. He wasn't able to feed them. I went there and I suggested, "Why don't you do now what you're going to have to do in the end anyway and get the problem straightened out," and we did, and it didn't cost peanuts.

Mr. Wilkinson: In Perth county—I'm the member for Perth county—it's the same thing. We use peer review, and it is very, very effective because it's farmer talking to farmer.

Mr. Cornish: There are problems out there, but if somebody would sit down and take a common-sense approach and not come in and say, "You've got to do this and it's going to cost you"—well, the thing is, you don't know what it's going to cost under a lot of these regulations anymore, and the hackles go up. It's just like your inspectors coming unaccompanied. I fear for their frigging lives, not from 99% of the people, but it only takes 1% of them to be nuts and—like, four Mounties went onto a farm unannounced and got killed; what's one inspector who doesn't even have a sidearm going to do?

1510

The Acting Chair: Let's go to Mr. Yakabuski for additional questions.

Mr. Yakabuski: Thank you very much, Edgar, for your insightful and at times very entertaining submission. If it wasn't such a serious, serious topic, we'd have been able to enjoy it much more. I'll make my own attempt at humour here as well. You did say you weren't going to spend much time on the positives, that you weren't going to talk about the positives, but based on what we've been hearing at these hearings, I don't think that would have taken long.

It seems to me sometimes—and I'm not the one to make the statement, because sometimes I might say something that could be construed as being partisan—that in many, many ways, what's happening with this government is that they've taken the attitude that they are going to manage your lives better than they believe you

can manage them yourselves. It's this nanny attitude, and we see it in so much of their legislation.

I know this may be something that you haven't considered, but given this section 79—and I must clarify what Mr. Wilkinson said, that they could only go in if there was an imminent threat. Section 79 doesn't touch on imminent threats whatsoever, and the earlier presenter talked about that. All the guy has to be doing is a little monitoring. That's pretty wide open, isn't it?

Does it appear that this is just another attempt to manage your lives like a nanny?

Mr. Cornish: I really wouldn't call it managing, because I don't think it's a good plan. If you're going to manage something, you've got to have a good plan.

Mr. Yakabuski: You'd expect better care from a nanny.

Mr. Cornish: I didn't come here to throw the bill right out, because clean water is everybody's dream and everybody's hope, and we hope we can continue that. Sometimes you hear people wanting to throw a thing right out, and if you take that approach, then people don't hear what else you have to say. So I came here trying to point out some of the worst problems with it. I'm not here to condemn the thing, but I think it's just a financial nightmare the way they're going about it. Like I said, it's going to create a lot of jobs, and they're going to be high-paying jobs, but I'm not sure you're going to get much real return out of the money you spend.

Mr. Yakabuski: Would you agree that this bill is far from the best way to achieve the objective of clean, safe water in the province of Ontario?

Mr. Cornish: Well, I'm not a real authority for anybody to listen to, but it's got a lot of loopholes in it, if nothing else.

Mr. Yakabuski: Thank you very much.

The Acting Chair: Thank you, Mr. Cornish, for your presentation.

COUNCIL OF CANADIANS

The Acting Chair: Our next delegation is the Council of Canadians. Welcome.

Ms. Susan Howatt: Thank you very much. It's a very popular place to be today.

The Acting Chair: I know you've been outside, so in the event you haven't had a chance to hear, the presentation is up to 10 minutes and then there will be approximately five minutes for questions shared among the three parties. If you'd identify yourself for the purpose of our recording Hansard.

Ms. Howatt: Good afternoon. My name is Susan Howatt. I'm the national water campaigner with the Council of Canadians.

The Council of Canadians is Canada's largest citizen advocacy organization. We mostly do our work by promoting progressive policies on fair trade, clean water, safe food, public health care and other issues of social and economic concern to Canadians. Today, when I give my brief presentation, I do so on behalf of our almost

75,000 members and 70 local chapters across the country, including the Peterborough chapter, which I believe made a presentation this morning.

Maintaining public ownership and control of water resources is an important priority for the Council of Canadians. Indeed, a key component of the work that we do is to advocate for a national water policy that ensures sovereign control over our water resources and preserves water as a public trust.

There is an enormous need for source water protection measures that protect the integrity of the ecosystem and ultimately contribute to clean drinking water. Source water protection measures are integral in addressing the issues of both water quality and water quantity. Groundwater protection measures are also very key in meeting the concerns of Ontarians.

For all of these reasons, Bill 43, the Clean Water Act, is a policy direction that the Council of Canadians supports in principle. Our only real concerns are the implementation of this bill and what kind of capacity-building support municipalities will receive, and the infrastructure investment that will be needed to accompany this bill. To that end, I have three general comments on the Clean Water Act.

My first major comment is that the funding model needs to be fully public and close any doors to private involvement, either through privatization or through public-private partnerships.

My second comment is around the section of Bill 43 that talks about source protection areas and the establishment of committees, both of which I think are fine ideas but must involve a variety of stakeholders, including civil society groups and First Nations, and have adequate public participation.

The development of a source protection plan for each designated area is also a good exercise in identifying risks to drinking water, as well as the inclusion of land uses and other land development activities. Land and water are, by their very nature, connected, so the development of this exercise could indeed be strengthened by some community mapping and by robust participation.

The act identifies that the source protection plan is subject to the approval of the minister after consideration of public comment. My main concern is that public comments are indeed a meaningful consultation, and what that entails would be significant public education as well as creating the space for participation at every step of the way in decision-making. I also wonder what kind of technical support communities would receive to be able to develop their source protection plan.

The third general area of concern I have would be that of jurisdiction, in that municipalities have the authority to pass bylaws regarding water production, treatment and storage, but in areas where there is no such municipal jurisdiction, the province has this jurisdictional responsibility. But how about First Nations communities in Ontario and other areas that may fall outside of jurisdiction? My question to those here today is, how will

these communities be able to comply with source water protection measures and what will the interplay be like between the municipal, provincial and federal levels of government, since there will be many different pots to draw from?

A number of environmental groups have recently released a common statement about the Clean Water Act and the recommendations that have been developed for strengthening of the source water protection measures introduced by this bill. At this time, I'd like to just reiterate what our colleagues in the environmental community have articulated, as I support all of these suggestions.

The first one is the adoption of the precautionary principle as a guiding principle for this document.

The second one is the meaningful involvement of First Nations, Metis and Inuit peoples. I would add to that my encouragement that the province of Ontario engage with First Nations' governments on a state-to-state basis as a government rather than simply a stakeholder.

The third area of recommendation is extensive and ongoing public participation and education. That's clearly an obvious one for the Council of Canadians.

The fourth one is sustainable funding for the program's implementation.

That's where I'll end, because that last point, the sustainable funding model, is really the deal breaker for organizations like mine.

My primary concern with the Clean Water Act is that with increased source water protection, it will set environmental standards that may be financially difficult for municipalities to reach alone. As municipalities' responsibilities have evolved, the funding model by the province has not concurrently grown to enable municipalities to deliver and treat water as a public utility. Without adequate funding from the province of Ontario, a larger role for the private sector would be created, and that is a bit of a concern.

1520

I also recognize that it is beyond the scope of these public hearings to discuss the funding model for water delivery, but I do believe that they are somewhat integrated. Many of the concerns that I have actually stem from the infrastructure report, Watertight, that came out last year or the year before. I won't bother diving into those concerns that have been identified. Nevertheless, it is important at this point to articulate very clearly that source water protection measures are very much encouraged, but we also encourage, in concert with higher environmental regulations, the financial tools for municipalities to reach them alone and to protect the nature of public, not-for-profit delivery and treatment of water.

In conclusion, I would like to thank you for the opportunity to present to this panel and I look forward to further discussions and opportunities for public involvement in the delivery and treatment of water. In Ontario we're facing a situation not unlike many other provinces, where we have an aging infrastructure and a trend toward

growing cities and towns. But at the same time, I encourage the province of Ontario to match this amplified environmental regulatory framework with increased investment in public infrastructure.

I welcome the direction Bill 43 takes—protecting the integrity of the ecosystem with the overall goal of improving the quality and quantity of drinking water at the source—but I also encourage the province to investigate a funding model that is sustainable and preserves the public, not-for-profit nature of water services. Thank you.

The Acting Chair: Thank you, Ms. Howatt. We'll begin our questions with Mr. Wilkinson.

Mr. Wilkinson: Susan, thank you for coming in. I have a couple of comments and then a question. To be clear, we are opposed to the privatization of our sources of water. I think you could provide us with some valuable insight about how to ensure that we have meaningful public education and consultation. We've had to do that over our history on a number of issues, like conservation authorities. All of them have had to get a community to come together and try to solve a common problem.

We take your comments about First Nations. Justice O'Connor was quite clear about that, and the need to make sure that everyone in Ontario, whether they are First Nations or not, have a right to safe, clean drinking water and working together. There is right now a big exercise going on, that was just announced, between the municipalities and the province about trying to sort out the best new fiscal arrangement that repairs years of previous downloading.

My question: You were saying that on these source protection committees we need to have stakeholders, including non-governmental organizations like yourself. We've had farmers say, "We want more than half the seats." We've had municipalities say, "We want more than half the seats." Public health has come in and said, "We've got to be on that table." The ministry has been looking at the question of whether we have to be more prescriptive to make sure the source planning committee covers the waterfront and gets everybody around the table. What role do you see your group playing, and how would you be accepted in a source planning committee in Cornwall if you're perceived to be representing another interest?

Ms. Howatt: That's a reasonable question. I certainly respect the fact that every committee is a juggling exercise. Of course, you're trying to catch as many interested groups as possible. You're quite right to point out my organization or me as the national water campaigner that probably isn't appropriate to sit on a local planning board for a source water protection plan development meeting. But, having said that, civil society groups take a number of different forms and, as you well know, the most appropriate members at that table would be a concerned citizens' group. We have many local chapters in the Council of Canadians and they would be best to sit on a committee in their own home.

The Acting Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: Thank you very much, Ms. Howatt, for your presentation. I'm very familiar with the Council of Canadians. In fact, just for a note of interest, I attended a conference this week in Chicago, and the major theme of the first day was the Water Resources Act of 1985-86, and more recently as well, signed initially by Frank Miller on behalf of Ontarians. It's quite interesting that they have the same issues in the United States as well, water diversion being one of the primary issues that may be of interest to the Council of Canadians.

More importantly, you mentioned the Watertight report. I think it quoted a number, something like \$18 billion, to deal with this infrastructure deficit. In fact I can tell you, and I'll put it on the record here, as a member of the environment and energy cabinet of the previous government, that we were given to believe—and I'm not disclosing anything confidential, I don't think—a very large number, something in the billions of dollars, to deal with this source water issue. I'd say the number was close to \$7 billion. That might be my opinion, saying that at some risk, but that as a fact came from the research policy people. So it's a big number. We see \$120 million here. That isn't even going to come close to installing a few water-efficient taps.

The issue we've heard most consistently is funding, and you referenced sustainable funding. What direct advice could you give this committee in the form of amendment in the statute to see some kind of per capita or some method of flowing, or resolving disputes, for that matter, between urban and rural? What strong advice could you give us?

Ms. Howatt: To be honest, I think the best organization that is probably set up to give you that kind of advice would be the Ontario Waterworks Association, because they are the managers of many of these water systems in Ontario.

Mr. O'Toole: The municipal water workers? This should have been dealing with that first and then rolling it out. Perhaps managing it, they should have dealt with municipal water systems and getting uniform standards, enforcement, costs, ratios etc., as opposed to just one big paintbrush on everybody who has a tap in their house and water comes from somewhere.

That's good advice. Maybe, as you said, it should go strictly with municipal water systems—

Ms. Howatt: Well, no.

Mr. O'Toole: —to start with. Then a five-year review, perhaps?

The Acting Chair: The clock is ticking.

Mr. O'Toole: We're trying to make progress here, as opposed to—

Ms. Howatt: Sure. So just for clarity, could you repeat your question in the form of a question?

Interjections.

Mr. O'Toole: Would you like to see the bill reference primarily municipal water systems, to start with?

Ms. Howatt: Primarily I'm concerned, again, about the decision-making that we have and the role that we see water playing, whether we manage it as a public trust or as a commodity. Specifically, I would like to see water

delivery systems and water treatment services remain operated as public utilities. I have seen, throughout the development of the Watertight report and this process, that this is just a general trend across the country, where responsibilities and roles are being saddled on municipalities, and they're evolving. So my very general paintbrush stroke is to encourage the province to work with municipalities to provide the infrastructure. It costs less money for us to deliver and treat water as a public utility than if we allow the private sector in.

The Acting Chair: Mr. Tabuns.

Mr. Tabuns: Thank you very much for that presentation. I agree with you that funding is a critical element to the success of this initiative. One issue that was raised pretty continuously by rural and farm groups over the last few days has been this whole question of using this act to promote water conservation and water efficiency, so that the draw on the resource would be reduced and thus the reach of measures for corrective action could be contained. What would be the position of your organization on using this act to promote water efficiency and conservation?

Ms. Howatt: My position generally on this act—and I wouldn't be contradicting the landowners when I say that—is that I am concerned, again, about the cost and the funding, and that would mean the financial support as well as the technical support. I do hear the landowners' concerns that this bill will be very difficult for them to reach. So is there a prescriptive approach to support landowners to reach the goals set and reach these thresholds?

Mr. Tabuns: Thank you very much.

The Acting Chair: Thank you, Ms. Howatt, for your presentation and responses to the questions.

1530

DAVID McNEVAN

The Acting Chair: Mr. David McNevan? I'm looking for Mr. David McNevan.

Welcome, sir. Momentarily you'll have the undivided attention of all members of the committee, I'm sure.

Mr. O'Toole: I'd like to pose one question, if I could get unanimous consent to pose the question. Let's vote right now: Are you for or against funding this?

The Acting Chair: He's seeking unanimous consent to pose a question. No, we don't have unanimous consent.

Mr. McNevan, welcome.

Interjections.

The Acting Chair: Gentlemen, gentlemen. On the committee, we have a deputant who would like to make a presentation on his time for our interest. Welcome, sir. I think you probably heard my comments earlier: up to 10 minutes for your presentation and then approximately five minutes for questions shared among the parties. Please, if you'd identify yourself, although we have it here, for the purpose of Hansard. The time is yours.

Mr. David McNevan: Good afternoon, honourable Chair. I take comments from our last speaker, as there are

a couple of things that came to light in her topic: lack of funding and juggling. Certainly, in our industry, we're familiar with both. I'm here as a farmer from Peterborough county, not with any group; only our own family farm.

I saw the piece in the Peterborough Examiner, and the reason I'm here—I guess there are handouts on my correspondence with our honourable MPP, Jeff Leal. I apologize for not being here this morning, because I don't want to waste anybody's time—that does make things flow—but to stick on topic as I understand Bill 43, and certainly, I've been enlightened a little bit, it does have something to do with water. Until this point and until this—

Mr. Yakabuski: And a lot to do with money.

Mr. McNevan: Exactly. Until this meeting this afternoon, listening to some of the previous speakers, I was concerned that it had nothing to do with water whatsoever.

I'll read to you my—I'm here as a farmer, not as a politician. Some of this may not be politically correct, and for that I take full responsibility. No one has looked it over, legally or otherwise. So I juggle this in as our day ends, or our morning begins, between ours and the next items on the agenda:

"Jeff Leal, Peterborough MPP

"Good afternoon Jeff:

"Finally, with the rain, we get a break from the hay.

"Your letter as requested.

"Bill 43 disguised as the Clean Water Act greatly concerns me.

"I didn't realize that 'free country' meant 'free to trespass on private property without permission.' The bill clearly states: whoever in the opinion of a permit official may do so.

"Section 97 places a minimum fine for farms on a first conviction of \$50,000 per day of the offence. Jeff, the farmers must not tolerate this nonsense. We would be bankrupt the first day.

"Section 59 and 71 offers no escape from bankruptcy.

"Would you be kind enough to point out anywhere in the act that it mentions 'clean water.' Section 60 dictates that bureaucrats can compel people to pay without appeal and grants authority to place all costs on your tax bill.

"Section 88 and 89 saves the bureaucrats and government from ... legal action initiated by an individual or business to stop any justice."

I'm probably repeating here, but I beg your patience.

"Section 54 and 58 casts shadows of tyranny and grants the authorities the right to use whatever force is necessary to enforce the act. A person authorized to enter property for the purpose of doing 'a thing' may call on police officers as necessary and may use force as necessary to make the entry and do 'the thing.' Please define 'thing.' Sounds like a real group of educated people have put this one together.

"Authorized to enter property for the purpose of doing 'a thing.' May use force as necessary to make the entry and do 'the thing.' Sounds like education to me.

"Section 83 grants bureaucrats the authority to seize and confiscate private property without consent and without payment or compensation.

"Section 53 and 79 authorizes bureaucrats to enter any private property without consent or warrant and empowers bureaucrats to make any excavations, collect samples, evidence, or data and compels people to provide any and all information. 'A permit inspector may, for the purpose of enforcing this part, enter property without the consent of the owner or occupier and without warrant.'

"Jeff: Bill 43 will kill ... Ontario, our democracy, and put an end to justice, under the pretext of protecting our water quality and quantity. There are only two choices during this perfect storm: Seek refuge in a high-rise condo, or stand firm and repair democracy's wall of justice, and demand that Bill 43 be forever washed away in the bright lights of public interest.

"Jeff, you suggested that petitions would help you to defeat this bill. If your office would be kind enough to word the petition so that it would help us to help you defeat it, we will work hard to collect signatures on the petition at various local rural events.

"I see in the Peterborough Examiner that there will be meetings across the province during the week of August 21 with submissions to the clerk to be made by 5 p.m. August 8. Time is running out, but we would have as many landowners from Peterborough as possible. Where is the meeting in Peterborough to be held and when? It should be publicized big-time. I never asked you: How did you vote on the previous two readings, or did you, and why? Looking forward to your response as soon as possible ... time is running out.

"Fact: zero dollars budgeted or available for assistance. Sixty-seven and a half million dollars of taxpayers' money spent on the study. Sounds like fair planning to me.

"As you requested, Jeff, hope this letter is of some help in helping you defeat Bill 43.

"Sincerely,

"Dave McNevan, concerned farmer for rural Canada to survive.

"cc: Dean Del Mastro, MP—Canada beware; Randy Hillier, president, landowners association."

I was next notified by our MC to see if I would come here today. I took time out of our farm operation to be here: certainly no guidelines in place. This was my response last night after everyone else had settled in for the evening, and I thought, well, if I'm going to go there, I'd better at least have something to say.

Bill 43, Clean Water Act, 2006, hearing:

Honourable Chairman, ladies and gentleman, fellow Ontarians: It would appear that the bottom line of this study is not very accurate or thorough if the study reveals that a farmer is capable of paying a \$50,000 fine per day for an offence after already struggling to survive the BSE crisis coupled with disastrous grain and commodity prices.

While all of our input costs are at 2006 prices, the products that we sell—grain, for example—are priced at 1970 prices, or in most cases much, much less. Corn, for

example: \$3.25 a bushel in the 1970s, and it currently settles in someplace around \$2.05 a bushel 35-plus years later. Unbelievable. How would you like your paycheque rolled back to 35-years-ago wages? This is the reality that farmers are forced to cope with. This is correct: Turn the clock back 35 years. This is the price that farmers are receiving today. Ridiculous, but the farmer struggles on, the few of us who are left. But a \$50,000 fine? Rural Ontario may as well throw in the towel right now. It would be the straw that breaks the camel's back.

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I urge you to lobby your MPPs, and your MP for that matter, to defeat Bill 43 at all costs. Leave rural Ontario and rural Canada some elbow room. We need our breathing space. We must work together as rural Ontarians to protect our farms. We don't need another Ipperwash, another Dudley George incident. Back off a little bit, government. This is our land too. After all, we do pay the taxes.

How many farmers were in favour of the \$50,000-a-day penalty in your \$67-million study, Mr. McGuinty? It would appear that those working in the study were not interested in working for wage prices of 35 years ago.

I beg to differ with the attitude that whoever feels that they should enter to do that "thing," may enter to do that thing. What is that thing? That's Bill 43. Caution: Be careful where you enter without the farmer's consent. We do not want any more Dudley George situations. This is not a warning, but a plea to back off of rural landowners a little bit. We have the right to farm.

A \$67-million study: Who did authorize the study? Come clean. Don't disguise Bill 43 as the Clean Water Act. Who wouldn't vote yes to clean drinking water? Who wouldn't want part of a \$67-million study towards your bank account? By that, I mean if you're involved in the study.

Help your MPP defeat Bill 43. Stand up for rural Ontario. Sign the petition to defeat Bill 43, the bill disguised as the Clean Water Act.

Thank you for your consideration. I have provided a copy of my observations for our MPP, Mr. Jeff Leal, to put in the hands of our honourable Premier, Mr. Dalton McGuinty, at his earliest convenience.

In closing, I would suggest that we have one petition—properly worded, properly circulated and properly presented—to defeat Bill 43. Don't over-regulate us out of business. Ontario may be your future food source someday.

Concerned farmer; thank you.

The Acting Chair: Thank you, Mr. McNevan. The first questions will come from Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation; very impassioned. I appreciate you taking the time from earning your livelihood. I would just say that you're right in your observation. Who wouldn't vote for clean drinking water? That's a very fundamental common ground that we share, Mr. Tabuns and I. But I am going to ask the question of Jeff that you posed here. Jeff,

will you vote against this bill as you've heard here today and this plea to make sure we get this right?

Mr. Leal: You want my response?

Mr. O'Toole: Well, I'll just leave it open, because you will get time. He will have time. Hopefully the parliamentary assistant will allow him to speak.

Mr. Leal: I have no problem to respond.

Mr. O'Toole: That's good. I think you're right: The lack of funding has been a fundamental issue here—and the lack of understanding. As someone said earlier, clearly, in these hearings you learn quite a bit by listening. What I've heard here is a shift, a sort of subtle shift, a suspicious shift, of responsibilities from the urban—who, somebody said earlier, had this problem of mucky water in Toronto and other places—to the rural, as if they are the cause of this problem. Some 80% of the drinking water basically comes from Lake Ontario. When they have storms down in Toronto, they flush the effluent from the streets and so on right back into Lake Ontario. At the conference I was at, there were great concerns about improving the water quality and the water treatment facilities with the growing population.

Urban Ontario is growing; rural Ontario is actually shrinking. There are fewer and fewer people every day, not just farming but living in rural Ontario, and they're being loaded down with having to have inspectors, enforcement, some kind of plan, and their tax base is shrinking. So I hear clearly what you're saying. As said by the previous presenter here, there's no sustainable funding and it seems to be the most important missing link here, and the recognition—even in expropriation, they've shifted that downloading, the expropriation of that community well, down to the municipality to buy it. Now, where are they going to get the money to buy it?

The Acting Chair: Thank you, Mr. O'Toole. Your time has expired. Mr. Tabuns.

Mr. O'Toole: Thank you very much for your presentation—very, very informative.

Mr. Tabuns: Thank you, sir. I appreciated the presentation as well.

You talked about the depopulation, the loss of farmers from the land. Could you expand on that a bit? I think that affects how people see this bill and what's doable and what's not doable. Can you give us some background on loss of neighbours and other farmers?

Mr. McNevan: Certainly the loss of farmers on the land, I don't believe, is directly related to the lack of clean drinking water, if that's the—

Mr. Tabuns: No. That was not the direction of my question. You seem a fairly healthy bunch.

Mr. McNevan: I was on the road for 14 years calling on farms, and in those days there were a lot of farms. Probably 90% of our business was dairy. It was brought to my attention here a week ago or so that there are six dairy producers left in our township, which at one time would be substantially more, many times—I would think probably 10 times.

In agriculture, if it's farming we're relating to, you have to be careful who you tell that you're in agriculture.

If you're not careful, you will be put in for psychiatric assessment.

Laughter.

Mr. McNevan: I say that in all honesty. People may laugh, but the future generation—if my son was honest with himself, and maybe he is more than I am, he would wonder why I even took the time to be here today. He is convinced there is no future in agriculture anyway, and what am I being so knuckleheaded and thick about to try and carry on? It's because I enjoy it, but the economics is not there and it's sad. The farms are disappearing. Why? I think it's pretty self-explanatory here, when we have to pay 2006 inflation prices for fuel. We had a Prime Minister at one time who said we'd pay a dollar a gallon for fuel and they threw him right out of office. Now we're paying \$5 a gallon and it seems to be that we're all happy if we can find it down the street for \$4.99 type of thing, you know?

The Acting Chair: Thank you, Mr. McNevan. I'm going to move to Mr. Wilkinson for an additional question.

Mr. Wilkinson: Thanks for coming in, Dave. That's why we have democracy. That's why we have these meetings. My riding of Perth—Middlesex is all rural. The biggest place there is 30,000 people, so it's as rural as it comes.

You're right about the commodity prices and the value of the dollar, because the price is set in Chicago on the Mercantile, and we're competing on our grains against Brazil, where they're doing three crops a year now.

But we're here to talk about the Clean Water Act, and I take your concerns very seriously. One thing I can do as the parliamentary assistant—I know you've written to my colleague Mr. Leal. I'll write you back personally. You can feel free to publish that or whatever; it's not a confidential letter. Because as we talked about it today, there were some parts where I thought there have been valid concerns, but there are some parts that are kind of out there as, I'd say, a canard, one of these things running around Tim Hortons about this and that. I think it might help you if we get some clarity on that so we get down to the issues.

The OFA, the NFU, the Christian Farmers, OFEC and OFAC have all said that they think the bill needs amendment but that it shouldn't be scrapped, that what it needs is amendments. Even when I was talking to Randy Hillier, for example, in Cornwall, he said, "If you can crack this nut, then I think we're okay with it." So I think the whole process here is to get to the point where we do look at amendments, because we don't start with the premise that if a bill gets written, it's perfect, right? I mean, that's the whole idea of democracy and getting people around the table. So I just want to thank you for coming out. You tell your son that a politician who is probably just as crazy as you are—you're in farming and I'm in politics, so I guess we have something in common. You're not the only one people ask, "What are you doing in that business?" You tell your son that I think his dad did the right thing by coming today and participating.

Mr. McNevan: I just feel that common sense is lost when you start throwing figures around of \$50,000 fines per day.

Mr. Wilkinson: And you're the first one to mention it, so that's good.

Mr. McNevan: It's just ridiculous. How long would you think—I've yet to make that in my first year. But to think that figure would be thrown around that loosely—and that's an indication of the wages people were paid to do this study. That's common terminology for them, something that we never see. So that's a big concern to me.

Mr. Wilkinson: Great. Thanks.

The Acting Chair: Thank you, Mr. McNevan, for your presentation and your response to the questions that were raised with you.

Members of committee, just before we adjourn today, I certainly want to thank all of the witnesses and those who attended in support or to listen to what was being said. I want to thank, obviously, through Mr. Leal in his riding, both the city and the county, and all of those folks in Peterborough who welcomed us so warmly, our staff from the Legislative Assembly and the support staff for making not only today but this week a great week.

With that, we stand adjourned.

The committee adjourned at 1551.

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